417

Fed. Sec. 15

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~411.~~ 142

JAMES H. WILSON, RECEIVER OF THE ST. LOUIS AND SOUTHWESTERN RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

JAMES L. GAINES, COMPTROLLER OF THE TREASURY OF THE STATE OF TENNESSEE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

FILED APRIL 26, 1878.

C. J

Statutory Lien
See Triplett Co. Case

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1 Be it remembered that at a supreme court of errors and appeals, begun and held at the capitol, in the city of Nashville, on the first Monday in December, A. D. 1877, it being the 3rd day of December, 1877, for the 5th, 6th, 7th, 8th, 9th, 10th, 11th, and part of the 16th judicial circuits, present, the hon. chief justice, Jas. W. Deaderick, and associate justices John L. T. Sneed, Thos. J. Freeman, Peter Turney, & Robert McFarland, when the following proceedings were had, to wit, upon the following transcript from the chancery court at Nashville, Tennessee:

To the Hon. W. F. Cooper, chancellor of the seventh chancery district of Tennessee:

JAMES H. WILSON, RECEIVER, &C., AND A CITIZEN of the city of St. Louis, Missouri, where his office and chief place of business is,
vs.
JAMES L. GAINES, COMPTROLLER, &C., AND A citizen of Tennessee.

Complainant says that on the 11th day of December, 1845, the general assembly of the State of Tennessee chartered the Nashville and Chattanooga Railroad Company for the purpose of building a road from Nashville to Chattanooga. The charter was accepted and the

2 road built. By the 38th section of the charter the capital stock was forever exempted from taxation, and the road, with its fixtures and appurtenances, including workshops, warehouses, and vehicles for transportation, were exempted from taxation for twenty years from the completion of the road. (Acts 1845-'6, p. 27.)

On the 13th of February, 1852, the said general assembly chartered the Edgefield and Kentucky Railroad Company for the purpose of building a road from Nashville to the Kentucky State line, and subsequently various acts of assembly were passed amendatory of the charter. The charter and amendments were duly accepted and the road constructed, the construction being completed in 1859, and was equipped and run, either by the company or a receiver for the State, as a common carrier of freight and passengers from the time of its completion until sold under the orders of this court in the case of the State of Tennessee against the Edgefield & Kentucky Railroad Company and others, and has been since run as such carrier of freight and passengers by the purchasers or their assigns or by a receiver duly authorized to control it.

Under the 6th section of the act of February 13th, 1852, afore-

3 said, the company, for the purpose of making and running the road, was invested with all the powers, rights, and privileges of the Nashville & Chattanooga Railroad Company conferred by the act of December 11th, 1845, and was made subject to the liabilities and restrictions imposed by that act. (Acts 1851-'2, p. 281.)

And by the 2nd section of an act of the general assembly aforesaid, passed December 15th, 1855, the charter of the Edgefield & Kentucky Railroad was so amended as to give it all the rights and privileges that were conferred on the Nashville & Southern Railroad by an act of the general assembly aforesaid, passed January 1st, 1852. (Acts 1855-'6, p. 13.)

By the 1st section of the act of January 1st, 1852, aforesaid, the Nashville & Southern Railroad was granted all the powers, rights, and privi-

leges, and subjected to all the lial ilities and restrictions prescribed by the charter of the Nashville & Chattanooga Railroad Company, and in the various amendments thereto, except as in the act further provided. That in the act further provided, by its 7th section, it is provided that the 13th section of the act of December 11th, 1845, shall not be a part of the act. (Acts 1851-'2, p's 281-3.)

4 And complainants avers that this 13th section of the act of December 11th, 1845, simply provides against the construction of any other railroad running latterally within twenty miles of the said Nashville & Chattanooga Railroad, and has no reference to the matters provided for in the 38th section aforesaid; so, then, the Edgefield & Kentucky Railroad is entitled to the benefits of said section 38.

That the State extended its aid under the general internal improvement laws to the Edgefield & Kentucky Road, and its sale aforesaid was under a bill filed to foreclose the State's statutory lien upon the road & superstructure, equipments and stock, and the property owned by the company as incident or necessary for its business, &c. That the road, its franchises, property, rights, privileges, immunities, &c., were sold under the proceedings in the cause aforesaid and purchased by the county of Davidson and others, who subsequently sold the same to the American Contract Company, and it subsequently sold and transferred the same to parties who put it into consolidation with various other railroads running through the States of Kentucky, Indiana, and Illinois to form the line or the St. Louis and Southeastern Railroad, a line of road extending from the city of St. Louis, Mo., to the city of Nashville, Tenn.; and the charter of the various roads aforesaid forming

5 the consolidated line were so amended as to conform to the consolidation under the law in such cases made and provided; that under the sales and purchases aforesaid such necessary steps were taken as to give vestiture and divesture of title, and the State's lien on the road has been paid and satisfied.

That the portion of the line aforesaid formed by the Edgefield & Kentucky Road is about forty-five miles in length, and was heretofore conveyed in trust to Philo C. Calhoun and Geo. Opdyke to secure a large indebtedness to various parties. That these trustees have filed a bill in the Federal court at Nashville, Tenn., among other things, to place the road, its property, &c., into the hands of a receiver, and complainant has, under proceedings in the cause, been appointed and qualified as such receiver, and is now in control of the same. A copy of the proceedings for the sale of the road and for the appointment of the receiver aforesaid will be produced and filed as the court may order.

Complainant now states that many railroads in Tennessee have been chartered with the exemption given by the 38th section of the charter of the Nashville and Chattanooga Railroad, and it is believed that none of them were sought to be taxed until the expiration of twenty

6 years from the completion of the road until since the passage of the act of March 20th, 1875. (Acts 1875, p. 100.)

That this act was based upon the 28th section of the 2nd article of the constitution of 1870, which provides that all property shall be taxed, and provides for the taxation of all railroads in the State, the 1st section providing that each railroad company owning and operating a railroad in this State shall, by the 1st of May of each year, file a complete schedule of all of its property, and then prescribes the manner in which the property shall be given in.

The 2nd section provides for the appointment of three railroad tax assessors.

The 3rd section directs that the assessors in making the valuation shall have in view and look to the capital stock, the corporate property, the franchises of each company, as well as the gross receipts and the individual stock of each shareholder, and then provides a mode of assessment, and then directs that after having ascertained the revenues to be taxed, that they certify the same to the comptroller.

The 4th section provides a mode of proceedure where no schedule shall be furnished as provided for in section 1st.

The 6th section provides that when the assessors have complied with the act, and certified to the comptroller the amount to be taxed to each railroad company, together with the facts, that it shall be the
7 duty of the comptroller to submit the same to the governor, the secretary of State, and the treasurer, who are constituted a board of examiners.

By the 7th section of the act it is provided that when the valuation of the property shall be ascertained and certified to the comptroller, according to the provisions of the act, it shall be the duty of the comptroller to ascertain the amount of taxes due the State, and notify the company, and certify to the county clerk of each county in which a railroad line lies the amount to be taxed in said counties respectively for county purposes, and likewise to the mayor of every incorporated town the amount to be taxed by such town.

The 8th section provides that on failure to pay the tax due the State within a prescribed time, that the comptroller may issue a distress warrant to any sheriff in the State, whose duty it shall be to levy the same upon any personal property of the company to be found in his county and sell the same, and on failure to realize the taxes and cost from personal property, he is authorized to sell all the property of the defaulting road lying and being in this State, together with its franchises, on thirty days' notice, and make a deed to the purchaser; and that the governor issue writs of possession, authorizing the sheriff to put the pur-
8 chaser in possession of the road and its property, whose duty it shall be to execute the writ at once.

Section 11th provides for exemption from the foregoing sections upon condition of accepting the provisions of that section.

On the day of March, 1877, the general assembly aforesaid passed an act amending the act of March 20, 1875. (Acts 1877, p. 31.)

Complainant now states that the Edgefield and Kentucky Railroad Company did not accept the 11th section of the act of March 20, 1875; nor did the St. Louis or Southeastern road accept it.

That complainant, without waiving the right of exemption for the said Edgefield and Kentucky road, filed a schedule of the property of the road with the railroad tax assessors, who subsequently proceeded to value and assess the road, its property, etc., as directed by the acts of March 20, 1875, and the amendatory act of March, 1877, and give the notice required by the 3rd section of the act of March, 1877. That three exceptions were filed within the time prescribed by said act to the report of such assessors, on the following grounds:

1st. That they have no jurisdiction to value or assess property not situated in the State of Tennessee.

2nd. That under the charter of the Edgefield and Kentucky road, the capital stock was forever exempt from taxation.

9 3rd. That under the said charter the road, with all of its fixtures and appurtenances, including workshops, warehouses, and vehicles of transportation, were exempt from taxation for twenty years from the completion of the road, which time had not expired.

That the said assessors, no doubt, supposed that they had no jurisdiction over the question raised by the exception, and that their powers were ministerial, and not judicial. So, after valueing and assessing the road, its property, etc., certified the same to the comptroller, who has submitted the same to the board of examiners, and they have returned the same to him, and he has ascertained the amount due the State as follows:

For 1875	$1,152 00
" 1876	1,152 00
" 1877	290 65
" 1878	290 65
	$2,885 30

And the county and municipal taxes will be as much, if not more. That the assessors valued and assessed the entire road bed (507 miles), and the entire superstructure and rolling stock, and all of the vehicles of transportation of the entire line; and also valued and assessed the main and side beds in Davidson and Robertson counties, and the
10 depots, engine-house, round-house, car-shop, blacksmith shop, and office, in said counties. The values placed upon the property will appear from a substantial copy of their report to the comptroller, which is herewith filed, marked Exhibit A, and made a part hereof, but need not be copied. The values placed upon the property, while too high, are not grossly unreasonable, if the property is subject to taxation at all.

The Edgefield and Kentucky Railroad is about 45 miles in length, and runs through the corporate towns of Nashville, Edgefield, and Springfield, in the counties of Davidson and Robertson, Tennessee. It was built by a subscription made by Davidson County and of private individuals and the aid furnished by the State. It is believed and charged that nearly, if not quite, all of the stock subscribed as capital stock was used in the construction of the road bed and superstructure. Doubtless more than $300,000 was so used, and it is so charged. The road bed and superstructure were necessary for the enjoyment of the franchise, and it is submitted must stand in the place of the capital stock invested in it and is capital stock. That the depots, engine-houses, car-shop, round houses, office, and rolling stock is not subject to taxation if
11 the exemption given by the 38th section aforesaid be valid; nor is the road bed and superstructure subject to taxation if that section be valid, even if they be not capital stock.

The right of amendment or repeal was not expressly reserved in the charter of the Edgefield and Kentucky road; nor were all charters granted by the legislature subject to that right under the constitution of the State.

By the 7th section of the 11th article of the constitution of 1834 the legislature had the power to grant such charters of incorporation as it might deem expedient.

By the 28th section of article 2nd of the constitution of 1834 "All lands liable to taxation held by deed, grant, or entry, town lots, bank stock, slaves between the ages of twelve and fifty years, and such other property as the legislature may from time to time deem expedient, shall be taxable." All property shall be taxed according to its value, and taxation shall be equal and uniform under this section.

Complainant is advised that the proper construction of the latter part of this section is not that all of the property in the State is to be taxed

but that where an article of property is selected for taxation that it must be taxed according to its value, and not specifically, and that equal and uniform taxation is not a limit on the taxing power of the legislature, and does not apply to every species of taxation, but it is to be taken as applying only to direct taxation on property. As such, it does not require that all should be taxed alike. The legislature may, therefore, then discriminate in the imposition of taxes on certain classes of persons or species of property, taxing some and exempting others. When, then, the legislature had the power to grant charters of incorporation without restrictions and the power to discriminate in the taxation of certain classes of property or persons, it certainly had the power to make the exemption provided for in the 38th section aforesaid.

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Complainant is advised that the exemption is a privilege, and such a privilege is a contract, and the exemption would continue, although the road should be consolidated with other roads, and the exemption being a contract, could not be impaired either by a subsequent constitution or subsequent legislation, and he submits that the acts aforesaid of March, 1875, 1877, impairs the contract between the State and his company. The comptroller has not issued his distress warrant, or certified to the clerks of the county courts or mayors, as provided for in section 7 of the act of March 20th, 1875; and should he do so, it would put complainant to great trouble and unnecessary expense and subject the road to great injury and loss, and irreparable injury if the road and its property should be sold under section 8th of the act of March 20th, 1875.

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The premises considered, complainant prays that the said Gaines be made a party defendant, and be require' to answer according to the course of the court, and that he be enjoined from collecting the tax aforesaid, or issuing a distress warrant, and from certifying to the clerks of the county courts or mayors, under the act aforesaid, that the exemption provided for in the 38th section aforesaid be declared in force; that copy, bill, subpœna, &c., and writs of injunction, issue, and for general relief.

This is the first application for the process prayed for.

DEMOSS & MALONE,
Solicitors.

R. G. Butler, agent, etc., makes oath that the matters and facts stated in the foregoing bill are true, to the best of his knowledge, information, and belief.

R. G. BUTLER.

Sworn to before me Oct. 1, 1877.

T. W. WRENNE,
D. C. & M.

EXHIBIT A.

To the honorable Jas. L. Gaines, comptroller:

We have the honor to submit the following itemized statement, showing the amount and value of the property of the St. Louis & Southeastern Railroad Company subject to taxation in Tennessee, including the number, condition, and value of locomotives and cars, amount of moneys, credits, &c., &c., together with the number of miles of main tracks and sidings and value of same, as required by the acts of the general assembly of Tennessee, passed March 20th, 1875, and March, 1877:

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	No.	Condition.	Value of each.	Total value—each class.	Total value.	
Locomotives	20	.....	4,250	97,750	.....	
Passenger cars	7	.....	1,250	8,750	.....	
Express "	.....	.....	.....	.....	.....	
Baggage "	3	.....	600	1,800	.....	
Caboose "	14	.....	250	3,500	.....	
Box "	204	.....	225	45,900	.....	See schedules & depositions of Butler & Humestine.
Stock "	14	.....	200	2,800	.....	
Flat "	102	.....	75	7,650	.....	
Coal "	.....	.....	.....	.....	.....	
Gondolo "	268	.....	102 50	43,550	.....	
Hand "	.....	.....	.....	.....	.....	
Push "	51	.....	15	765	212,465	
Merking "	.....	.....	.....	.....	.....	
Road tools—each kind:						
Picks	.....	.....	.....	.....	.....	
Shovels	.....	.....	.....	412 70	412 70	See schedule.
15 Tools for manufact'g and repairs & machinery	.....	.....	.....	.....	.....	
(Item, insert depositions.)					5,667 00	
Office furniture	None.	.....	.....	278 40	278 40	N. W.
Wood & fuel	.....	.....	.....	.....	.....	
Stationary	.....	.....	.....	.....	.....	
Materials in store	.....	.....	.....	4,000 00	4,000 00	See deposition of Humenstine.
Supplies	.....	.....	.....	.....	.....	
Cash assets	.....	.....	.....	.....	.....	
Capital stock	.....	.....	.....	.....	.....	
Gross earnings	.....	.....	.....	.....	.....	
Total	.....	.....	.....	.....	488,922 15	

‡ represents road-bed.

Length and value of main bed and sidings in each county and incorporated town in the State of Tennessee.

	Miles, main bed.	Miles, side bed.	Total.	Value per mile, main & side bed.	No. of bridges and location included in road-bed.	Value.	Total value.
COUNTY.							
Robertson	28.25	1.05	29.30	2,563 02	.....	.....	
Davidson	13.75	2.02	15.77	.....	.....	.....	
	42.00	3.07	45.07	.....	.....	.....	
In Ky	.....	.....	98.00	.....	.....	.....	
16 INCORPORATED TOWNS.			143.07				
Springfield	.55	.....	.55	.....	.....	.....	
Edgefield	1.85	1.50	3.35	.....	.....	.....	
Nashville	.15	.50	.65	.....	.....	.....	
Total in the State	.....	.....	.....	.....	.....	.....	

Real estate, depots, shops, and buildings in each county and incorporated town.

County.	No. of depots and location	Value.	No. and name of buildings of other kinds.	Value.	No. of acres or feet.	Value per acre or foot.	Value water-tanks.	Total.
Robertson	1. Sadler's	100					100	200
	1. Frost's	100						100
	1. Adams	500					100	600
	1. Greenbrier	200						200
	1. Oakland	100					200	300
Davidson	Baker's		1 engine house	100			200	300
	1. Goodletsville	150						150
	Edgefield		1 round "	2,000	1 a, 500			2,500
	"		1 car shop	600				600
	"		1 blacksmith's "	175				175
	"		1 office	100				100
	1. Nashville	1,250			1 lot, 3,000			4,250
	1. "	250						250
								9,525

Superstructure.

	No. of tons.	Value per ton.	Total value.	Tons of chairs.	Value of each.	Total value.
Rails, iron	12,271 20	20	245,424	157	22 40	3,576 80
" steel	825	40	33,000	No. switches, 71	30	2,130
Spikes	335	30	10,050	No. of cross-ties, 297,080	10	29,708
				No. of turn-tables, 3	400	1,200
Total						325,028 80

17 *Grand totals.*

	Value.
Cash assets	
Rolling stock	212,465 00
Tools & machinery	5,479 70
Supplies	
Materials	4,000
Furniture & stationery	278 40
Road-bed	366,691 27
Superstructure	325,028 80
Real estate, depots, buildings	9,525 00
Total, less $1,000.00 exemptions	922,468 17
Total value of State taxation 45.07 miles, at 6,447.67 ×	290,586 48
" valution for Robertson County 29.30 " "	188,916 73
" " " Davidson " 15.77 " "	101,679 75
Incorporated towns:	
" " " Springfield, .55	3,546 21
" " " Edgefield, 3.35	21,599 69
" " " Nashville, .65	4,190 98

Demurrer.—Filed Oct. 12, 1877.

JAS. H. WILSON, REC'R, &C., }
vs.
JAS. L. GAINES, COMP'T'R. }

Comes the def't, by J. B. Heiskell, att. gen'l for the State, and
18 demurs to the bill of the said compl't, and says that he ought not further to answer the same, and for causes of demurrer he sets down the following:

1st. That so far as the same affects the State of Tennessee, he is not subject to suit with a view to reach through him the State treasury funds or property.

2nd. So far as the tax due the State or claimed on her behalf is sought to be affected by this bill, the same is in contravention of the act of 1873, prescribing the practice in regard to the collection of taxes. For these reasons he demurs to so much of the bill as affects the tax claimed for the State.

He further demurs to the whole bill:

1st. For the want of merits, in this, that the exemptions claimed are not valid. The first claim of exemption, by direct reference to the Nashville & Chattanooga charter, only gives powers & privileges for the making & running of the road.

The second claim only gives, as claimed, powers & privileges & not exemptions, and these words do not cover exemption from taxation. The second claim seeks to reach, by a reference to the Nashville & Southern R. R. Co., rights and privileges of the N. & C. R. R. without limitation, when the charter, by direct reference to the N. & C. R. R.
19 only embraced a limited grant of the privileges of the same company, the Nashville & Southern charter embracing important privileges (as time to begin & complete road; privileges as to running on turnpike roads; exemptions from damages for running parallel to turnpike roads), by which the reference thereto may well be satisfied without more.

For these and other reasons he demurs and prays that as to the State the bill be dismissed, on the two grounds first above stated, and that the same be wholly dismissed on the grounds stated to the whole bill, and that he go hence with his reasonable costs.

J. B. HEISKELL, *A. G.*

Decree.—4 February, 1878.

JAMES H. WILSON, REC'R, &C., }
vs.
JAMES L. GAINES, COMP'T'R, &C. }

This day this cause came on to be heard before the Hon. W. F. Cooper, chancellor, &c. Upon the demurrer of the defendants, and upon argument of counsel, and the court being sufficiently advised, it is ordered, adjudged, and decreed that the demurrer be and the same hereby is sustained, and the bill of complainants dismissed with costs ad-
20 judged against complainants, for which fi. fa. may issue.

From which decree sustaining the said demurrer and dismissing the bill the complainant prays an appeal to the present term of the supreme court of Tennessee, sitting at Nashville, which is granted, the complainant having executed bond with security as the law directs.

STATE OF TENNESSEE,
Davidson County:

I, Robert Ewing, clerk & master of the chancery court at Nashville, do hereby certify that the foregoing transcript is a full, true, and perfect record of all the papers and proceedings had and filed in the cause wherein Jas. A. Wilson, rec'r, &c., is complainant, and James L. Gaines, comptroller, & others are defendants, as the same now appears of record and on file in my office.

In testimony whereof I hereunto set my hand and affix the official seal of said court, at office in the court-house at Nashville, this the 20th day of February, 1878, and in the 102nd year of American Independence.

[SEAL.] ROBERT EWING,
Clerk & Master.

21 *Bill of costs.*

State tax		5 00
Co. do		2 50
Robert Ewing, C. & M.:		
Bill, 25; pros. bond, 25; ent. sec., 25	75	
Reg. bond, 25; demurrer, 25; notice, 25; rule	75	
30; decree (7 p.), 50; ord., &c., 1.00; appeal	1 80	
Bond, 50; transcript, 4.00; c'f't & seal	4 50	
75; ent. costs, 25; bill of costs, &c., 50	1 50	9 30
Total		16 80

22 Be it remembered that at a supreme court of errors and appeals, began and held at the capitol, in the city of Nashville, on the first Monday in December, A. D. 1877, it being the 3rd day of December, 1877, for the 5th, 6th, 7th, 8th, 9th, 10th, 11th, and part of the 16th judicial circuits, present, the Hon. Chief Justice James W. Deaderick and Associate Justices John L. T. Sneed, Thos. J. Freeman, Peter Turney, & Robert McFarland, when the following proceedings were had, to wit:

J. H. WILSOW, REC'R,
v.
JAS. L. GANES, COMPTROLLER.

MARCH 11, 1878.

This cause came on to be heard and was heard upon a transcript of the record from the chancery court of Davidson County, and it appearing to the court that there is no error in the decreee of the chancellor, the same is hereby in all things affirmed.

It is further decreed that complainant and , his surety for costs, pay the costs of this cause in this court and in the court below, for which execution may issue.

23 JAMES H. WILSON, REC'R, &C.,
vs.
JAMES L. GAINES, COMPTROLLER, &C.

On 11th December, 1845, the legislature chartered the Nashville & Chattanooga R. R. Co. for the purpose of building a road from Nashville

to Chattanooga. By 38 sec. of that charter the capital stock was forever exempted from taxation, and the road with its fixtures and appurtenances, including work-shops, warehouses, and vehicles for transportation, were exempted from taxation for *for* twenty years from the completion of the road.

On 13th February, 1852, the legislature chartered the Edgefield & Kentucky Railroad for the purpose of building a road from Nashville to the Kentucky State line. The road was completed in 1859. The road was run by the company or a receiver for the State until sold under the decrees of the chancery court, and has since been run by the purchasers or their assigns or a receiver.

Under section 6 of the act of Feb., 1852, the Edgefield & Ky. R. R. Co. was invested with all the powers, rights, and privileges of the Nashville & Chattanooga R. R. Co. conferred by the act of Dec'r, 1845.

By 2nd sec. of an act of assembly passed 15 December, 1855,
24 the charter of the Edgefield and Ky. Railroad Co. was so amended as to give it all the rights and privileges that were conferred on the Nashville and Southern R. R'd by an act of the general assembly passed Jan:, 1852.

The N. & S. R. R'd, by the last act referred to, was granted all the rights, powers, and privileges and subjected to all the liabilities and restrictions prescribed by the charter of N. & C. R. R'd Co., and in the various amendments thereto, except as in the act further provided. In the act further provided by its 7th section is provided that the 13th section of the act of 1845 shall not be a part of this act. The 13th section referred to provides that no other road shall be built, constructed, or cut, &c., nearer than twenty miles of the chartered one, &c. The State extended its aid under the general improvement laws to the Edgefield & Ky. Road, and its sale was under a bill to foreclose the State's statutory lien upon the road equipments, stock, &c. The road, its franchises, property, rights, & privileges, &c., were sold and were purchased by the county of Davidson and others, who subsequently sold to the American Contract Company, which subsequently sold it to parties who put it into consolidation with various other railroads, &c.

On 20 March, 1875, the legislature passed an act declaring the
25 mode and manner of valuing the property of a railroad company for taxation, directing assessments, providing for proceedings in case of failure, &c., &c. This latter act was amended in March, 1877.

The bill insists that the exemption is a privilege; that such privilege is a contract. That the exemption would continue altho' the road should be consolidated with other roads. That the acts of 1875 and 1877 impair the contract between the State and the company, and prays that the comptroller be made a party defendant, that he be enjoined from collecting the taxes or issuing a distress warrant, from certifying to the clerks of county courts, &c.

The first question whether privilege is exemption from taxation has been before us twice. The first time in the case of the Miss. & Tenn. R. R. v. The State, at Jackson; and again in the case of the E. T., Va. & Ga. R. R'd Co. vs. Hamblin County, in both of which we held after full argument that the term "privilege" did not include exemption, nor was it so intended by the legislature in its use in any or either of the several acts referred to. However comprehensive a meaning may have been given to the term privilege by the courts of other States or by
26 lexicographers, we are constrained to use it in the restricted sense and meaning given to it by our own laws, and especially by the constitution of the State.

That it was not intended or understood to be sufficiently broad by the framers of the constitution of 1834 to embrace exemptions, is made clear and indisputable by reference to section 7 of article XI of that instrument, by which it is ordained, "The legislature shall have no power to pass any law granting to any individual or individuals rights, privileges, immunities, or exemptions other than such as may be," &c.

A legislature, acting under this constitution for its powers and as defining its duties, must be conclusively presumed to have used a word or term of the constitution in the sense and with the meaning given it by that constitution.

The acts in review in this case were passed while the constitution of 1834 was in force and the supreme law of the State, the chart defining the powers and jurisdictions of the several departments of the government, and under which they were organized and moved and acted, and conformity to which determined the legality of their acts.

27 It cannot be pretended or presumed that the able men composing the convention which framed that constitution used language or terms without a purpose or meaning or double terms of the same meaning without more.

We are satisfied the term "privileges" as employed in that constitution in the connexion in which it appears was used in its restrictive sense.

That the interpretation we have given is the correct one is made the more manifest by the use of the identically same language in section 8 of article XI of the constitution of 1870, which shows the convention of that year understood the terms "privileges" & "exemptions" to perform distinct offices, and to have been employed with different meanings, the latter more comprehensive.

The act of 11 December, 1845, section 38, uses the word "exempt." If the legislature in the acts incorporating the Edgefield & K'y road had intended to have given it immunity from taxation, the natural way of so doing would have been in the use of the term "exemption," as suggested by the controlling word "exempt" in the section referred to.

28 The use in the statutes of two of the words of the constitution, i. e., "rights" and "privileges," and the omission to employ either of the other two following in immediate succession, viz, "immunities" and "exemptions," either of which would have made clear the construction claimed by complainant, evidenced a purposed intention on the part of the legislature not to grant the benefit claimed by the bill, but on the contrary to reserve it for the advantage of the State.

Exemptions from taxation are contrary to public policy, and can only be allowed when granted in clear and unmistakable terms; they are not creatures of intendment or presumption. If the language in which they are claimed to be granted leaves it doubtful, the benefit of doubt must be given to the State, the life which is taxes.

In the case of Humphreys vs. Pigues (16 Wall.), to which we are referred as authority against our conclusion in the former opinions of this court, the meaning of the term "privilege" is not discussed; a reading of the report shows clearly that it was in no way brought to the attention of the court, and was in fact not involved, so that while

29 some of the reasoning of the judge delivering the opinion may seem to militate against the conclusion to which we have arrived, we must remember the discussion was of an entirely different question and to sustain an entirely distinct conclusion in no manner involving the meaning of the term "privilege."

The case of the Knoxville & Ohio R. R'd Co. vs. Hicks was predicated of the decrees of the chancery court at Nashville, this court holding that the decrees of the chancellor in that case were in pursuance of the act of the legislature and equivalent to a legislative grant.

One other question remains: would the present owners of the road or the complainant, receiver, be entitled to the exemption claimed, had it been expressly granted to the original company or the term "privilege" as comprehensive as claimed? We think not. We have already mentioned the several sales and transfers of the road, its property, &c. For our determin of this question we employ the language of Mr. Justice Fields in Morgan v. Louisiana (3 Otto): "Intendments will not be indulged to enlarge the operation of a clause restraining the exercise of a sovereign attribute of a State. As has often been said by this court, the whole community is interested in retaining the power of taxation undiminished, and has a right to insist that its abandonment shall not be presumed in any case where the deliberate purpose of the State to abandon it does not appear. Here it is the capital stock of the company and its works, fixtures, workshops, warehouses, vehicles of transportation and appurtenances which the statute declares shall be exempt, evidently meaning that it is the property of the company; so long as it remains such, that the exemption shall apply."

The franchises of a railroad corporation are rights or privileges which are essential to the operations of the corporation and without which its road and works would be of little value, such as the franchises to run cars, to take tolls, to appropriate earth and gravel for the bed of its road or water for its engines, and the like. They are positive rights or privileges, without the possession of which the road of the company could not be successfully worked. Immunity from taxation is not one of them. The former may be conveyed to a purchaser of the road as part of the property of the company; the latter is personal and incapable of transfer without express statutory direction.

Dismiss the bill as decreed by the chancellor.

TURNEY, *J.*

OFFICE OF THE CLERK OF THE SUPREME COURT,
FOR THE MIDDLE DIVISION OF THE STATE OF TENNESSEE,
Nas'ville, April 16th, 1878.

I, W. N. Cowden, clerk of said court, do hereby certify that the foregoing is a true, perfect and complete copy of the transcript from the chancery court of Davidson County, Tennessee, and of the proceedings of said supreme court, pronounced at its December term, 1877, in the case of Jas. H. Wilson, rec'r, against James L. Gaines, comptroller, as appears of record now on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the court at office in the capitol at Nashville, on this the 16th day of April, 1878, and the Independence of the United States the 102nd year.

[SEAL.]

W. N. COWDEN, *Clk*,
By H. R. ESTELL, *D. C.*

Supreme Court costs.

State tax court, $5; county tax, $ 5
Clerk Cowden, filing record, 75 c'ts; entering security, 25 c'ts; entering on 7 dockets, 70 cts; continuance, c't; motions, 25 c'ts; notices, c'ts; orders for publications, c'ts; sci.

fa. c'ts; sug. diminution, c'ts; certioraria, c'ts; taking and filing bond, c'ts; deed, c'ts; supersedas, c'ts; filing petitions or affidavits, c'ts; rules, c'ts; writ of possession, c'ts; procedendo, c'ts; order to remand cause, c'ts; copy judgment or decree and opinion words, 200 c'ts; 1 seal, 50 c'ts; report, words, c'ts; entering decree, 25 c'ts; judgment, 75 c'ts; decree on reports, c'ts; judgment vs. security, 25 c'ts; entering supreme court costs on docket, 50 c'ts; endorsing same on fi. fa., c'ts; entering inferior court costs on docket, 50 c'ts; endorsing same on fi. fa., c'ts; capias, c'ts; recognizance, c'ts; fi. fa. c'ts; alias fi. fa., and copy costs, c'ts; enrolling words, c'ts; postage, 50 c'ts; transcript to Sup. C't U. S., 7.50 ..... 14 20

$19 20

33 *Writ of error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable James W. Deaderick, chief justice, and John L. T. Sneed, Thomas J. Freeman, Peter Turney, and Robert McFarland, associate justices of the supreme court of the State of Tennessee, greeting:

Because in the record and proceedings as also in the rendition of a decree in a suit which is in the said supreme court of the State of Tennessee, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between James H. Wilson, receiver of the St. Louis & Southwestern Railway Company (consolidated), is complainant, and James L. Gaines, comptroller of the treasury of the State of Tennessee, is defendant, wherein was drawn in question the validity of certain statutes of and authorities exercised under said State, on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of such their validity; and wherein a title, right, privilege, or immunity is claimed under the Constitution of the United States, and the decision was against said title, right, privilege, or immunity specially set up and claimed under said Constitution, a manifest error hath happened, to the great damage of the said James H. Wilson, receiver
34 as aforesaid, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 2d Monday of October next, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause to be therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said

Supreme Court, the 9th day of April, in the year of our Lord one thousand eight hundred and seventy-eight.

[SEAL.]

E. R. CAMPBELL,
Clerk of the Circuit Court of the United States for the Middle District of Tenn.

Allowed by—

JAS. W. DEADERICK,
Chief Justice of the Supreme Court of Tennessee.

35 *Citation.*

THE UNITED STATES OF AMERICA, *ss:*

To James L. Gaines, comptroller of the treasury of the State of Tennessee, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Tennessee, wherein James H. Wilson, receiver of the St. Louis & Southeastern Railway Company (consolidated), is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the decree rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this ninth day of April, in the year of our Lord one thousand eight hundred and seventy-eight.

JAS. W. DEADERICK,
Chief Justice of the Supreme Court of Tennessee.

I acknowledge due and legal service of this citation, April 9, 1878.

J. B. HEISKELL,
Solicitor for Defendant in Error & Att'y-Gen'l of the State of Tennessee.

36 Know all men by these presents that N. G. Butler & Wm. Pratt are held and firmly bound unto Jas. L. Gaines, comptroller of the State of Tennessee, in the full and just sum of five hundred dollars, to be paid to him, his certain attorney, executors, administrators, assigns, or successors in office, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this 9th day of April, in the year of our Lord one thousand eight hundred & seventy-eight.

Whereas lately, at the supreme court of the State of Tennessee, in a suit depending in said court between James H. Wilson, receiver of the St Louis & Southeastern Railway Company (consolidated), plaintiff in error, and James L. Gaines, comptroller of the treasury of the
37 State of Tennessee, defendant in error, a decree was rendered against said Wilson, receiver, &c.; and the said Wilson, rec'r, &c., having obtained a writ of error and filed a copy thereof in the clerk's office of the said court, the decree in the aforesaid suit, and a citation directed to the said Gaines, comptroller, &c., citing and admonishing him to be and appear at the Supreme Court of the United States, to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such, that if the said Wilson, rec'r, &c., shall prosecute his said writ of error to effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

N. G. BUTLER. [SEAL.]
WM. PRATT. [SEAL.]

38 Approved by—

JAMES W. DEADERICK,
Chief Justice of the Supreme Court of Tennessee.

I, W. N. Cowden, cl'k of the supreme court for the middle division of the State of Tennessee, do hereby certify that the foregoing is a true, perfect, & complete copy of the security or bail in error in the case James S. Wilson, rec'r, against James L. Gaines, comptroller, as the same appears of record now on file in my office.

In testimony whereof I hereunto set my hand and affixed the seal of the court at office in the capitol at Nashville, on this the 2nd day of May, 1878, and the Independence of the United States the 102 year.

[SEAL.] W. N. COWDEN, *Cl'k*,
By H. R. ESTELL, *D. C.*

(Indorsed:) Sup. Court U. S. 1877, Octo. term. No. 1084. James H. Wilson, receiver, &c., pl'ff in error, vs. James L. Gaines, comptroller, &c. Certified copy of appeal bond. Filed 6 May, 1878.

(Indorsement on cover:) No. 411. James H Wilson, receiver of the St. Louis and Southeastern Railway Company, plaintiff in error, vs. James L. Gaines, comptroller of the treasury of the State of Tennessee. Tennessee sup. court. Filed 26th April, 1878.

IN THE

Supreme Court of the United States

No. 142.

JAMES H. WILSON, Receiver of the St. Louis and Southeastern Railway,

Plaintiff in Error.

vs.

JAMES L. GAINES, Comptroller of the Treasury of the State of Tennessee,

Defendant in Error.

Brief and Argument for Plaintiff in Error,

By ED. BAXTER.

Thomas McGill & Co., Law Printers, Washington, D. C.

IN THE

Supreme Court of the United States.

No. 142.

JAMES H. WILSON, RECEIVER OF THE ST. LOUIS AND SOUTHEASTERN RAILWAY, PLAINTIFF IN ERROR,

vs.

JAMES L. GAINES, COMPTROLLER OF THE TREASURY OF THE STATE OF TENNESSEE, DEFENDANT IN ERROR.

STATEMENT.

Plaintiff in error filed his bill in the Chancery Court of the Seventh Chancery District of Tennessee to enjoin the collection of a tax assessed upon the St. Louis and Southeastern Railway by the railroad tax assessors of the State of Tennessee under acts of the General Assembly of that State passed March 20, 1875, and March 20, 1877.

The bill charges that on the 11th day of December, 1845, the General Assembly of said State chartered the Nashville and Chattanooga Railroad Company for the purpose of building a railroad from Nashville to Chattanooga. That by the thirty-eighth section of said charter it is enacted that "the capital stock of said company shall be forever exempt from taxation, and THE ROAD, with all ITS fixtures and appurtenances, including workshops, warehouses, and vehicles of transportation, shall be exempt from taxation for the period of twenty years from the completion of the road,

and no longer." (Trans., p. 1; Acts Tenn. 1845–46, p. 27, sec. 38.)

The bill further alleges that on the 13th of February, 1852, said General Assembly chartered the Edgefield and Kentucky Railroad Company for the purpose of building a road from Nashville to the Kentucky State line, and subsequently various acts of the Assembly were passed amendatory of the charter. The charter and amendments were duly accepted and the road constructed; the construction being completed in 1859; and it was equipped and run either by the company or a receiver for the State as a common carrier of freight and passengers from the time of its completion until sold under the orders of said Chancery Court, in the case of the State of Tennessee against the Edgefield and Kentucky Railroad Company and others, and has been since run as such carrier of freight and passengers by the purchasers or their assigns, or by a receiver duly authorized to control it.

That under the sixth section of the charter of said Edgefield and Kentucky Railroad, said company "is invested, FOR THE PURPOSE OF MAKING AND USING SAID ROAD, with all the rights and privileges, and subject to all the liabilities and restrictions that are conferred and imposed on the Nashville and Chattanooga Railroad Company by an act passed on the 11th of December, 1845, so far as the same are not inconsistent with the provisions of this act." (See Transcript, p. 1, and Pamphlet Acts of Tennessee, 1851–52, pp. 338, 339.)

The bill further charges that, by the second section of an act passed by said General Assembly on December 15, 1855, the charter of the Edgefield and Kentucky Railroad was so amended as to provide that "said company shall be entitled to all the rights and privileges that were conferred upon the Nashville and Southern Railroad Company by an act of the General Assembly of the State of Tennessee passed January 1, 1852, entitled 'An act to charter the

Nashville and Southern Railroad Company.'" (See Transcript, p. 1, and Pamphlet Acts of Tennessee, 1855–56, p. 13.)

That by the first section of the act of January 1, 1852, aforesaid, it was enacted that the said Nashville and Southern Railroad Company "shall have and enjoy all the rights, powers, and privileges, and be subject to all the liabilities and restrictions prescribed in the charter of the Nashville and Chattanooga Railroad Company, and in the various amendments thereto, except as herein further provided."

That the exception referred to was contained in the seventh section, which provided that the thirteenth section of the act of December 11, 1845, incorporating the Nashville and Chattanooga Railroad Company, should not be a part of the charter of the Nashville and Southern Railroad Company; and the thirteenth section of the charter of the Nashville and Chattanooga Railroad Company simply provided against the construction of any other railroad running laterally within twenty miles of the said Nashville and Chattanooga Railroad, and had no reference to the matter of exemption from taxation. (See Transcript, pp. 1, 2, and Pamphlet Acts of Tennessee, 1851–52, pp. 281, 283.)

The bill further charges that the State extended its aid under the general internal improvement laws to the Edgefield and Kentucky Railroad, and its sale aforesaid was under a bill filed to foreclose the State's statutory lien upon the road and superstructure, equipments and stock, and the property owned by the company as incident or necessary for its business, &c. That the road, its franchises, property, rights, PRIVILEGES, IMMUNITIES, &c., *were sold* under the proceedings in the cause aforesaid, and purchased by the county of Davidson and others, who subsequently sold *the same* to the American Contract Company, and it subsequently sold and transferred *the same* to parties who put it into consolidation with various other railroads running through the States of Kentucky, Indiana, and Illinois, to form

the line of the St. Louis and Southeastern Railroad, extending from St. Louis, Missouri, to the city of Nashville; and the charter of the various roads aforesaid, forming the consolidated line, were so amended as to conform to the consolidation under the law in such cases made and provided.

That the portion of the line aforesaid formed by the Edgefield and Kentucky Road is about forty-five miles in length, and was heretofore conveyed in trust to certain trustees, who filed a bill in the Federal court at Nashville, and placed the road, its property, &c., in the hands of complainant Wilson as receiver, who was at the filing of the bill in control of the road. (See Trans., p. 2.)

The complainant insisted that the Edgefield and Kentucky Railroad, by virtue of the amendment to its charter, which gave to said road all the rights and privileges that had been conferred on the Nashville and Southern Railroad, was entitled to the exemption from taxation contained in the charter of the Nashville and Chattanooga Railroad, inasmuch as said Nashville and Southern Railroad Company at the date of said amendment was entitled to said exemption under its charter. He insisted that this exemption was a contract which could not be violated by the subsequent acts of 1875 and 1877, which attempted to tax the road, and that said exemption was attached to said road and followed the road into the hands of its present owners. (See Transcript, p. 5.)

The State of Tennessee demurred to the bill. (See Transcript, p. 8.)

The chancellor sustained the demurrer and dismissed the bill, from which decree the complainant appealed to the Supreme Court of Tennessee at Nashville, (see Transcript, p. 8,) where the decree of the chancellor was affirmed. (See Transcript, p. 9.)

The cause is brought to this court by writ of error. (See Transcript, p. 13.)

Assignment of Errors.

First. The Supreme Court of Tennessee erred in affirming the decree of the chancellor dismissing complainant's bill.

Second. It erred in deciding that the Edgefield and Kentucky Railroad was not exempt from taxation to the same extent as was the road of the Nashville and Chattanooga Railroad Company.

Third. It erred in deciding that the original exemption from taxation given to the Edgefield and Kentucky Railroad by its charter and amendments did not attach to the road, and did not follow it into the hands of the present owners.

Points of Law and Fact.

First. In enacting by the amendment of December 15, 1855, that the Edgefield and Kentucky Railroad Company should have all the rights and privileges that had been conferred on the Nashville and Southern Railroad Company, the effect was the same as if the charter of the Nashville and Southern Railroad Company had been repeated at length in the amended charter of the Edgefield and Kentucky Railroad Company; and the effect of the provision in the charter of the Nashville and Southern Railroad Company, that said company should have all the rights, powers, and privileges of the Nashville and Chattanooga Railroad Company, was the same as if the charter of the Nashville and Chattanooga Railroad Company had been repeated in the charter of the Nashville and Southern Railroad Company. The combined effect, therefore, of the charter of the Nashville and Southern Railroad Company, and of the amendment making that charter a part of the charter of the Edgefield and Kentucky Railroad Company, was

the same as if the charter of the Nashville and Chattanooga Railroad Company had been repeated in so many words in the charter of the Edgefield and Kentucky Railroad Company.

Second. Where the road of one company is exempted from taxation by its charter, and the charter of a second road gives it all the rights and privileges of the first, the word "privilege" embraces an exemption from taxation, and the second road will be entitled to the same exemption as the first. (See Humphrey *v.* Pegues, 16 Wall., 244; South-Western R. R. Co. *v.* Georgia, 92 U. S., (2 Otto,) p. 676, *in note;* Chesapeake and Ohio Railroad Co. *v.* Virginia, 94 U. S., p. 718; Tomlinson *v.* Branch, 15 Wall., 460; P. & W. R. R. Co. *v.* Maryland, 10 How., pp. 376, 393, 394; State *v.* Betts, 4 Zabriske, pp. 556, 557; L. & N. R. R. Co. *v.* Gaines, compt'r, 3d Federal Reporter, p. 266; State *v.* Hicks, Ewing & Co., 9 Yerger, (Tenn.,) p. 486; K. & O. R. R. Co. *v.* Hicks, 1st Legal Reporter, p. 338. See Webster's Unabridged Dictionary, Crabb's English Synonyms, Abbott's Law Dictionary, Bouvier's Law Dictionary, Brown's Law Dictionary, Burrill's Law Dictionary, and Paschal's Annotated U. S. Constitution, pp. 225, 226, for definition of the word "privilege" showing that it embraces an exemption or immunity.)

Third. The bill charges, and the demurrer admits, that the Edgefield and Kentucky Railroad, together with its franchises, property, rights, *privileges, immunities*, &c, were sold under the proceedings in the Chancery Court at Nashville, in the case of The State of Tennessee *v.* The Edgefield and Kentucky Railroad, in which the State's statutory lien was foreclosed, and that *the same* were transferred by *mesne* conveyances to the parties who put it into the consolidation known as the St. Louis and Southeastern Railway.

Under the act of the Legislature of Tennessee, approved

December 22, 1870, entitled "An act to amend an act of 1870, chapter 79, for the sale of the interest of the State in delinquent railroad companies, passed July 1, 1870," it is enacted, in section 10, that "upon the sale of any of the franchises of either of the railroad companies by the commissioners under the provisions of this act, all the rights, *privileges, and immunities* appertaining to the franchises so sold under its act of incorporation and the amendments thereto, and the general internal improvement law of the State and acts amendatory thereof, shall be transferred to and vest in such purchaser, and the purchaser shall hold said franchise subject to all liens and liabilities in favor of the State, as now provided by law, against the railroad companies." And by section 1 of said act it is enacted that said Chancery Court "is hereby invested with exclusive jurisdiction to hear, adjudicate, and determine all questions of law and matters of controversy of whatever nature—whether of law or of fact—that have arisen, or that may arise, touching the rights and interest of the State and also of the stockholders, bondholders, creditors, and others in said roads, and to make all such rules, orders, and decrees, interlocutory and final, as may be deemed necessary in order to a final and proper adjustment of the rights of all the parties, preliminary to a sale of the interest of the State in said road; also to declare the exact amount of indebtedness of each of said companies to the State, and likewise to define, as may be thought proper, what shall be the rights, duties, and liabilities of a purchaser of the State's interest in said roads, or either of them, and what shall be the reserved rights of said companies' stockholders and others, respectively, as against said purchasers, after such sale, under the existing laws of this State." The Chancery Court having, under its decree, sold the road, its franchises, property, rights, privileges, and immunities, the correctness of its decree cannot be questioned in this proceeding; and even if it could, under the provisions of sec-

tion 10 the court was fully authorized to decree that upon the sale of the franchises of the Edgefield and Kentucky Railroad, all the rights, privileges, and immunities appertaining to the franchise should be transferred to and vest in the purchaser.

In this respect this case differs from the case of The East Tennessee, Virginia and Georgia R. R. *v.* Hamblen County, decided at the present term of the court, in which it was held that the purchasers in that case bought nothing but the "property and franchises" of the company; the "privileges" never having passed under the sale of the Cincinnati, Cumberland Gap and Charleston Railroad. (See act of Tennessee, approved Dec. 22, 1870, chap. 79, p. .)

Fourth. Independent of the fact, admitted by the demurrer, that the Chancery Court sold the rights, privileges, and immunities, together with the road and franchises of the Edgefield and Kentucky Railroad Company, as authorized by the act approved December 22, 1870; we insist that under the language of the thirty-eighth section of the charter of the Nashville and Chattanooga Railroad Company, carried into the charter of the Edgefield and Kentucky Railroad Company, as shown above, the exemption was not personal to the Edgefield and Kentucky Railroad Company, but was attached to the road itself, and followed the road into the hands of the present owners without regard to whether the Chancery Court had the right so to decree or not. (See Tomlinson *v.* Branch, 15 Wall., 460; The State *v.* Hicks, Ewing Co., 9 Yerger, (Tenn.,) 486; Knoxville & Ohio R. R. *v.* Hicks, 1st Legal Reporter, 338 (Tenn., Sup. Ct.); New Jersey *v.* Wilson, 7 Cranch, 164; Maghee *v.* Mathias, 4 Wall., 143.)

ARGUMENT.

In order to get a clear perception of the spirit of the statutes of Tennessee involved in this litigation, it will be necessary to glance very briefly at the history of the internal improvement system of that State.

In 1830 the State of Tennessee had no outlet to the markets of the world except by way of the Mississippi River. Most of the merchandise sold in that State was wagoned from Baltimore and Philadelphia over the Allegheny Mountains, a distance of eight hundred or a thousand miles. While it was known that her farming lands were very fertile, and that her mountains were rich in minerals, yet, owing to the difficulty of getting her products to the markets, but little capital was invested in farming, and none whatever in the development of her mineral resources. Manufactures were unknown, and commerce was restricted to flatboats and keelboats. Her people were poor and, of course, unable by their individual means to build roads of any kind; therefore the State of Tennessee, in 1830, undertook to construct a number of internal improvements by the expenditure of her own funds under the supervision of her own officers.

This plan, as might have been expected, met the fate of all similar attempts; and in 1837–38 the State abandoned it, and in lieu thereof proposed to subscribe for one-half of the capital stock of all turnpike, canal, and railroad companies that might be organized within her own territory. She was to pay for her stock subscription in her own bonds, and was to have a lien upon the works of the companies to secure the payment of the stock subscriptions made by private individuals. It was found, however, that the people of the State being exclusively engaged in agricultural pursuits, did not have cash capital to spare sufficient to meet the object contemplated, and foreign capital could not be

induced to subscribe for stock in enterprises so far remote from the money centres of the country.

In 1851–52 the State was forced to change to its third plan of public improvements, by which the State proposed to loan its bonds to certain railroad companies to the amount of ten thousand dollars per mile, reserving a lien upon the roads, together with all their property and franchises, to secure the repayment by said companies to the State of the principal and interest of the bonds loaned by the State to the companies respectively, and reserving the right to enforce its lien by sale if it should ever become necessary. These bonds were to be sold in the Northern and Eastern markets, and with the proceeds the roads were in a great part to be built.

It was well known that the territory of Tennessee was but sparsely populated. The settlements were confined to the rivers, creeks, and coves, where the richest farming lands were to be found, and wide spaces of almost totally uninhabited country lay between these settlements. It was known that the railroads would have to rely for freight for many years, exclusively, upon agricultural products, and that the revenue from passengers would necessarily be very light. The hilly and mountainous character of the country rendered the construction of the roads very costly. To induce either home or foreign capital to embark in such hazardous undertakings, it was necessary to offer such inducements as the State had at her command, and among others she offered to exempt the roads, with all their fixtures, appurtenances, &c., from taxation for a period of twenty years from the time they were completed—the idea being that, in that time, the mineral resources of the country would be developed, manufactures would spring up, the population would be increased, and the revenue would become sufficient to render the roads self-supporting, and at the expiration of the twenty years the exemption was to be withdrawn. This twenty years has now expired on almost

every road in Tennessee, and the question is of no further practical importance at this day than to settle the liability of the company for such taxes as were assessed by the State prior to the expiration of the period of exemption, and to settle the further question as to whether the State has the right to assess the roads for taxes for twenty years back upon the theory that the exemptions as claimed never had any real validity.

Between the years 1840 and 1850 the State of Tennessee incorporated four or five main trunk lines of railway. Among them were the East Tennessee and Virginia and the East Tennessee and Georgia, reaching from Bristol, on the Virginia line, to Chattanooga; the Memphis and Charleston Railroad, reaching from Chattanooga to Memphis; the Nashville and Chattanooga Railroad, reaching from Chattanooga to Nashville; the Louisville and Nashville Railroad, reaching from Nashville to Louisville. In all of the charters of these main trunk lines there were certain exemptions from taxation expressed in so many words; they differed in character and duration, but in the charter of every main trunk line some exemption from taxation was conceded. When the act of 1851–52 was passed inaugurating the plan of loaning the bonds of the State to aid in the construction of railroads, a vast number of railroad companies were within a very few years chartered by the Legislature of Tennessee. The charters of the trunk-line roads contained, on an average, about forty sections each, occupying from 15 to 30 pages in the Pamphlet Acts of the Legislature. To have copied these charters in full, into the charters of the many roads that were incorporated between the years 1852 and 1860, would have swelled the Pamphlet Acts of Tennessee to an immoderate size, and would have profited no one except the public printer; therefore the plan was adopted to charter a company in an act containing five or six sections, in which special provisions necessary for that particular company were set out, and then,

(to abbreviate) the expression was used that the company then incorporated should have all the rights, powers, and privileges of the Nashville and Chattanooga Railroad Company, or of the Memphis and Charleston Railroad Company, or of some of the other trunk-line roads whose charters were thus used to serve as models for the later charters. All the railroads were completed about the same time, say from 1858 to 1861, and from that time to 1875 they were all treated precisely alike so far as the exemption from taxation was concerned. No tax assessor ever assumed to assess any of them for taxation; no tax collector ever assumed to demand a tax from any of them; no citizen ever demanded that their property should be placed upon the assessment list; no officer of the State Executive Department ever called the attention of the Legislature to the fact that the railroad companies of the State were not being taxed, and no Legislature prior to the session of 1875 ever attempted to pass an act to tax any of the railroads of the State. There was not the slightest difference shown between such companies as the Nashville and Chattanooga Railroad Company, in whose charter the exemption was set out in full, and such companies as the Edgefield and Kentucky Railroad Company, whose charter contained the exemption by reference to others.

The reason why the action of the State was changed in 1875 will be seen when it is remembered that about the year 1870 the State of Tennessee found herself heavily indebted, the principal amount of her indebtedness arising out of the bonds which she had loaned to aid in the construction of railroads. The State appealed to the railroad companies to aid her in her financial embarrassment, asking them to buy up an amount of State bonds equal to those which the State had loaned to them, and pay them into the State treasury in liquidation of their debts to the State, thus reducing the liabilities of the State to that amount, the State assuring them, and the public, that if she

could be relieved to that extent she could handle the balance of her debt without inconvenience.

Such of the railroad companies as were solvent and able to do so met the State with great liberality, and, although their debts to the State were not due for many years to come, they voluntarily undertook to retire them. To do this they were compelled to execute mortgages upon their property to secure bonds issued by themselves. These bonds were offered for sale in the Eastern markets, and in Europe, and the fact that the railroads were exempt from taxation for a number of years added materially to their value in the estimation of those who advanced their money in the purchase of the bonds issued by the companies. With the money received from these bonds the railroad companies purchased the bonds of the State, and paid them to the State in liquidation of their debts to the State.

Such of the companies as were insolvent of course could not pay. The State thereupon attempted to sell its interest in the delinquent railroads by commissioners appointed by the Legislature under an act approved July 5, 1870; (see Acts of 1870, chapter 79;) but as it was impossible to know what the interest of the State in the railroads was, and what the rights of the purchasers would be, no sales could be made, and thereupon the act approved December 22, 1870, referred to above, was passed, directing a bill to be filed in the Chancery Court at Nashville to settle the rights of all parties, and to ascertain what would be the rights of the purchasers under the sale, and also to declare that upon a sale of the franchises of either of the companies all the rights, privileges, and immunities appertaining to those franchises should be transferred to and vested in the purchasers. Under this act the Edgefield and Kentucky Railroad and other delinquent railroads were sold; and where the court decreed, as in this case, that the purchasers should take the rights, privileges, and immunities appertaining to the franchises of the company, the purchasers of course

understood that they were to get the exemption from taxation, which the roads had enjoyed uninterruptedly and without question for a period of from ten to twelve years prior to the time the sales were made under the decrees of the Chancery Court.

These sales were made payable in bonds of the State, and the bonds were paid into the treasury of the State, the State, to this extent, having its liabilities reduced. As soon as the State had succeeded in getting all out of the railroads that she could, a party of repudiationists sprang up, and attempted and pretended to have discovered that the State had the right not only to repudiate the exemptions from taxation which everybody had conceded in favor of the railroads, but they attempted to induce the people of the State to repudiate the balance of the indebtedness of the State, which balance the State had solemnly promised to pay, if the railroads would aid her in the reduction of her debt.

The equities of the purchasers of the railroads are therefore found to consist in the following facts:

First. That the State bonds originally loaned by the State to aid in constructing the roads were sold upon the faith that the roads were exempt from taxation, and therefore the better able to meet their obligations to the State.

Second. That the State, its people and officers, had all recognized, for more than ten years, the rights of the railroads to exemption, and had induced the purchasers to believe, from that line of conduct, that such exemptions did, in fact and law, exist.

Third. The bonds which the purchasers of these railroads paid into the State treasury, went in reduction of the State's liabilities, and they were paid in by the purchasers, upon the faith that the exemptions from taxation followed the property, and added materially to its value.

Fourth. That the Supreme Court of Tennessee, in the case of The State *v.* Hicks, Ewing & Co., 9 Yerger, page 486, had described an exemption from taxation as a privilege, and this court, in the case of Humphrey *v.* Pegues, 16 Wall., 244, had expressly decided that a privilege embraced an exemption from taxation. Any lawyer was justified in advising the purchasers, under these two cases, that they would get the exemption from taxation under the purchase of the privileges of a company, and no rule of construction ought to be placed upon those decisions at this day which would tend to defeat the rights of property fairly acquired, in honest reliance upon their apparent, if not technical, meaning.

Webster defines the noun "privilege" thus: "*Lat. privilegium;* an ordinance or law against or in favor of an individual, from *privus* private and *lex* law. A peculiar benefit or advantage; a right or *immunity* not enjoyed by others or by all; special enjoyment of a good or *exemption* from an evil or burden." * * * "Privilege, among the Romans, was something conferred upon an individual by a private law; and hence it denotes some peculiar benefit or advantage, some right or *immunity* not enjoyed by the world at large."

He defines the verb "privilege" thus: "To grant some particular right or *exemption* to; to invest with a peculiar right or *immunity;* as, to privilege representatives from arrest; to privilege the officers and students of a college from military duty." "To bring or put into a condition of privilege or *exemption* from evil; to *exempt;* to deliver."

Crabbe's English Synonyms gives this definition: "Privilege, in Latin *privilegium*, compounded of *privus* and *lex*, signifies a law made in favor of any individual or set of individuals." "Privilege and prerogative consist of positive advantages; exemption and immunity of those which are

negative; by the former we obtain an actual good, by the latter the removal of an evil."

Privilege, in its most extended sense, comprehends all the rest; for *every* prerogative, *exemption*, and *immunity* are *privileges*, inasmuch as they rest upon certain laws or customs which are made *for the benefit of certain individuals.*

Abbott's Law Dictionary says: "The vernacular sense and the ordinary meaning in common-law use are nearly the same, viz., a right or *immunity* held by way of exception to the general law; a peculiar or personal authority or *exemption*; something *held in virtue of a private or individual law* as it were; that which is granted or allowed to any person or any class of persons, either against or beyond the course of the common law."

Bouvier's Law Dictionary, title "*Privilegium*," defines it as "a private law inflicting a punishment or conferring a reward." * * "Every privilege granted by law in derogation of common right."

Brown's Law Dictionary says: "*Privilegium*, sometimes used in law for a *place* which has some special *immunity*, and sometimes for an *exemption* from the rigor of the common law."

Burrill's Law Dictionary gives this definition: "Privilege (from Latin *privilegium*), an *exemption* or *immunity* from some general duty or burden; a right peculiar to some individual or body; according to its etymology, a law or provision or exception of law in favor of an individual (*quasi prira* or *privatu lex*). A peculiar right or favor granted by law contrary to the common rule."

"The word 'rights' is generic, common, embracing whatever may be lawfully claimed. Privileges are *special* rights belonging to the individual or class and not the mass. Properly an *exemption* from some duty; an *immunity* from some general burden or obligation; a right peculiar to some individual or body." (See Paschal's Annotated U. S. Const., p. 225.)

In discussing the privileges and immunities of citizens of the United States, Justice Washington says: "An *exemption from* higher *taxes* or impositions than are paid by the other citizens of the State may be mentioned as some of the particular *privileges* and *immunities* of citizens, which *are clearly embraced by the general description of privileges* deemed to be fundamental." (Paschal's Annotated U. S. Const., p. 226.)

In the case of the P. & W. Railroad Company *v.* Maryland, 10 How., 376, it appeared that the charter of the Delaware and Maryland Railroad Company contained an exemption from taxation; that this company was consolidated with the Wilmington and Susquehanna Railroad Company, and then this company was consolidated with the Baltimore and Port Deposit Railroad Company, which had no exemption in its charter. The name of this last consolidation was the Philadelphia, Wilmington and Baltimore Railroad Co.

The court say that though the law provided that the P. W. & B. R. R. Co. should be entitled to all the *privileges* and advantages belonging to the original companies, yet, as those companies held their own corporate *privileges* under different charters, the evident meaning of the provision was that whatever *privileges* or advantages either of them possessed should in like manner be held and possessed by the new company to the extent of the road they had respectively occupied before the union; that it should stand in their places and possess the power, rights, and *privileges* they had severally enjoyed in the portions of the road which had previously belonged to them. It followed that, as the original Baltimore and Port Deposit Railroad Company had no exemption in its charter, the consolidated company could claim no exemption upon that part of its consolidated line; but as the charter of the original Delaware and Maryland Railroad Company did contain an exemption from taxation, and as the law under

which the consolidation took place gave to the consolidation the "property, rights, and *privileges*" of the original company, the court held that the original exemption of the Delaware and Maryland Railroad Company, as far as it went, was extended to the Wilmington and Susquehanna Railroad Company, and had been continued to the plaintiffs in error. It is true that the question actually before the court was as to the taxability of the Baltimore and Port Deposit Railroad, and not as to the taxability of the Delaware and Maryland Railroad; but the very principle upon which they decided that the former was liable, necessarily decided that the latter was exempt. (See 10 How., 393, 394.)

At all events the decision is of value as concurring with the above cited authorities in their definition of the word privilege.

The case of Tomlinson *v.* Branch, 15 Wall., 460, was in many respects similar to the one last cited. The South Carolina *Canal and* Railroad Co., which had an exemption from taxation for 35 years, was consolidated with the South Carolina Railroad Co., which had a perpetual exemption from taxation. The court held that the perpetual exemption in the charter of the latter company could not be extended to the property originally owned by the former, which became taxable upon the expiration of the 35 years originally granted to it; but that the consolidated company was entitled to the exemption of the former company so long as it lasted.

The syllabus is, that "where a railroad company by its charter was granted such an exemption for a limited period, and was afterwards merged in another railroad company which became invested with all its *rights, property, and privileges*, the *exemption* and its limitation *accompanied* the property, and [but?] a perpetual exemption from taxation in the charter of the latter company would not be extended to the property so acquired without express words or necessary intendment to that effect."

"Where two railroad companies are consolidated, the presumption is that each of the two united lines of road will be respectively held, with the *privileges* and burdens originally attaching thereto, unless the contrary is expressed."

The facts in the case of the Chesapeake and Ohio Railroad Company *v.* Virginia, 94 U. S., p. 718, were these:

An act was passed to incorporate the Covington and Ohio Railroad Company, with an exemption from taxation. Afterwards another act was passed authorizing the Covington and Ohio Railroad Company to consolidate with the Virginia Central Railroad Company, the consolidated companies constituting one corporation, to be known as the Chesapeake and Ohio Railroad Company; the consolidated company to have all the "*rights, privileges, franchises, and property*" which might have vested in either company prior to the act of consolidation. The consolidation never took place, but, under an alternative provision in the same statute, the Virginia Central Railroad Company was authorized to contract with the commissioners of the Covington and Ohio Railroad for the construction of that road from Covington to the Ohio River, and in the event such contract was made, the Virginia Central Railroad Company was to be thereafter known as the Chesapeake and Ohio Railroad Company, and was to be entitled to all the benefits of the charter of the Covington and Ohio Railroad, and to all the "*rights, interests, and privileges*" which by the act were conferred upon the Chesapeake and Ohio Railroad Company when organized. At the time said act was passed the Virginia Central Railroad Company was operating a road from Richmond to Covington which had no exemption from taxation. Said company entered into the contract contemplated and built the road from Covington to the Ohio River, and assumed the name of the Chesapeake and Ohio Railroad Company. The court held that this Chesapeake

and Ohio Railroad Company was entitled to all the "*rights, interests, and privileges*" which would have belonged to the consolidated company had the consolidation taken place; that the consolidated company would have possessed whatever privileges and advantages either of the original companies had possessed, to the extent of the road occupied by each; and that it would have stood in their places and have possessed "the powers, rights, privileges, and immunities the constituent companies had severally enjoyed in the portions of the road which had previously belonged to them." (See pp. 724, 725, 726.) An attempt was made to tax the real and personal property of every description of the Chesapeake and Ohio Railroad Company. The company claimed that the entire road from Richmond to the Ohio River was exempt. The court decided against it, so far as the road between Richmond and Covington was concerned, but as to the road between Covington and the Ohio River the exemption was conceded.

The case of the Southwestern Railroad Company *v.* Georgia, 92 U. S., (2 Otto,) 676, *in note*, was this: The Southwestern Railroad Company, chartered in 1845, with an exemption from taxation beyond one-half of one per cent of its annual net income, was united with the Muscogee Railroad Company, a company entitled to a similar *exemption*. The union was effected under an act of the Legislature of 1856, the effect of which was to extinguish the Muscogee Company by its merger into the Southwestern. No new corporation was created by the union of the two companies; but the powers of the Southwestern were enlarged, and all the *rights, privileges, and property* of the Muscogee Railroad Company became the rights and property of the Southwestern. The court held that the *exemption* from taxation which both companies enjoyed under their original charters could not be withdrawn by the Legislature.

This is a direct decision that where the "rights, privileges, and property" of one railroad company (the Musco-

gee) are conferred upon another (the Southwestern), the latter is entitled to the benefit of an exemption from taxation which belonged to the former.

State *v.* Betts, 4 Zabriskie Rep., 556, was this: The original charter of the Morris Canal and Banking Company authorized the construction of a canal from the Delaware to the tide-waters of the Passaic, and contained an exemption from taxation. By a supplemental act of the Legislature the company was authorized to continue the canal to the Hudson River, and "all the *rights, powers, and privileges*" granted by the original act were conferred on it for this purpose in the same manner and to the same effect as if the said company had been originally authorized by said act to construct their canal to the Hudson, &c.

The court (p. 557) say: "The supplement authorizing the extension of the canal confers on the company the same *privileges* granted to it in and by the original charter. *The term 'privilege' includes in its ordinary definition an exemption from such burdens as others are subjected to, as the privilege of being exempt from arrest or from taxation.* The Legislature manifestly intended by the language of the supplement to grant to the company the same exemption it would have enjoyed if the authority to continue the canal to the Hudson had been embraced in the original act and in the same terms."

The case of Humphrey *v.* Pegues, 16 Wall., 244, was this: An act of a State Legislature, passed in 1851, to incorporate a railroad company, contained no exemption from taxation; but an act passed in 1855, to amend its charter, did exempt it.

In 1863 an act was passed conferring on a company which had been incorporated in 1849 to build a railroad, but which had never yet found inducements sufficient to make it build the road, "*all the powers, rights, and privileges*" granted by the charter of the first-named road: *Held*, That the property of the second was made, by the act of 1863,

exempt from taxation, and that the Legislature could not repeal the act of 1863 so as to make it subject to taxation.

The court say (p. 247): "All the privileges, as well as powers and rights, of the prior company were granted to the latter. *A more important or more comprehensive privilege than a perpetual immunity from taxation can scarcely be imagined. It contains the essential idea of a peculiar benefit or advantage of a special exemption from a burden falling upon others.*" Again they say, on p. 249: "We are not advised what other powers and privileges were then and there conferred upon it in addition to the exemption we are considering. But this exemption was conferred—an exemption that must have been understood by the least reflecting person as being of immense value to all concerned in the road."

It is true that the Supreme Court of Tennessee, in this case, (Trans., p. 11,) use this language: "In the case of Humphrey *v.* Pegues, 16 Wall., to which we are referred as authority against our conclusion in the former opinions of this court, the *meaning of the term privilege is not discussed*. A reading of the report shows clearly that it *was in no way brought to the attention of the court*, and was in fact *not involved*." But, with all respect to the Supreme Court of Tennessee, I confidently submit that the meaning of the word privilege *was* brought to the attention of the court in Humphrey *v.* Pegues; that it was discussed by counsel; was directly involved in the issue, and expressly decided by the court.

Mr. D. H. Chamberlain's brief (16 Wall., 246) shows that he argued that "an exemption from taxation was never to be implied; that nothing less than a clear intention on the part of the Legislature, expressed in terms which admit of no other reasonable construction, would suffice to sustain a privilege so valuable and so far-reaching," &c. He also argued that the statute ought to be confined to such privileges, &c., as were necessary "for the purpose of organizing and forming the company," and it was doubtless in answer

to this argument that the court replied when they said: "We are not advised what other powers and privileges were conferred in addition to the exemption we are considering, but this exemption *was* conferred," &c., (p. 249.)

It was impossible for the court to have held that the second company was exempt from taxation, without holding that such exemption was embraced by the words "powers, rights, and privileges," and therefore the meaning of each and all of those words was directly in issue in that case.

The Supreme Court of Tennessee, in their opinion in this case, seem to think that the case of Humphrey *v.* Pegues was overruled by this court in Morgan *v.* Louisiana, 93 U. S., p. 217; but this is manifestly an error. All that was decided in Morgan *v.* Louisiana was that a sale of the property and *franchises* of a railroad corporation, under a decree founded upon a mortgage, which in terms covers the *franchises*, immunity from taxation upon the property of the company, provided in the act of incorporation, does not accompany the property in its transfer to the purchaser.

The mortgage did not cover the *privileges* of the company, and no attempt was made to sell the privileges. The court say (p. 221): "The question presented is whether, under the designation of *franchises*, the immunity from taxation passed to the purchaser," &c. On p. 223 they say the *franchises* of a railroad corporation are rights or privileges *which are essential to the operation of the corporation*, and without which its road and works would be of little value; *such as the franchise to run cars, to take toll, to appropriate earth and gravel for the bed of its road, or water for its engines, and the like.* They are *positive* rights or privileges, without the possession of which the road of the company could not be successfully worked. Immunity from taxation is not one of them," (*i. e.*, the *franchises*.)

We have never claimed that the word *franchises* embraced an immunity from taxation. But we claim that the word "privilege" does. We say the word *privilege* em-

braces *all* the *private* rights given by a charter to a corporation, and which are not enjoyed by the community at large. These private rights in a charter may be *positive*, such as their right to run cars, to take tolls, to appropriate land, &c., and then they are called *franchises* if they are essential to the operation of the road; or they may be negative, as an exemption from taxation or military duty, and then may be called immunities. Every *private* right secured by *special* law is a *privilege*, whether it be positive or negative in character, or whether it be a franchise or an immunity in name. The grant to one company of the *positive* privileges of another (*i. e.*, the franchises) would not carry the *negative* privileges (*i. e.*, the exemptions or immunities). This is all that is decided in Morgan *v.* Louisiana. But where *all* the privileges of one company are granted to another, it carries not only the *positive* privileges, such as *franchises*, but also the *negative* privileges, such as exemptions and immunities; and this is exactly what is decided in Humphrey *v.* Pegues.

The case of Humphrey *v.* Pegues decides that a grant of the whole is a grant of all the parts. The case of Morgan *v.* Louisiana decides that a grant of one part (the positive) is not a grant of another part (the negative).

Clearly there can be no conflict between two such decisions, and Mr. Justice Field, who delivered the opinion in Morgan *v.* Louisiana, certainly regarded them as in strict accord. On page 224 he says:

"*Immunity* of particular property from taxation *is a privilege* which *may sometimes be transferred under that designation*, (*i. e.*, the designation of privilege,) as held in Humphrey *v.* Pegues, 16 Wall., 224. *All that we now decide* is that such *immunity is not* itself *a franchise* of a railroad corporation, which passes as such (*i. e.*, as a franchise) without other description to a purchaser of its property." (See Morgan *v.* Louisiana, 93 U. S., p. 224.)

The case of Railroad Companies *v.* Gaines, 97 U. S., pp.

711, 712, has also been cited against us; but it was but a repetition of the case of Morgan *v.* Louisiana. The Knoxville and Charleston Railroad Company, *for the purpose of making and using its road*, was invested with all the powers, rights, and privileges of the Nashville and Chattanooga Railroad Company.

The court says:

"In Humphrey *v.* Pegues, 16 Wall., 224, *we held that the grant to one company of* ALL *the powers, rights, and* PRIVILEGES *carried with it an exemption from taxation;* but in Morgan *v.* Louisiana, 93 U. S., 217, that such an exemption did not pass by sale of the *franchises* of a railroad company. In the last case Mr. Justice Field, speaking for the court, said 'the *franchises* of a railroad company are rights or *privileges which are essential to the operations of the corporation, and without which its road and works would be of little value;* such as the franchise to run cars, to take tolls, to appropriate earth and gravel for the bed of its road, or water for its engines, and the like. They are positive rights and privileges, *without the possession of which the road of the company could not be successfully* worked. Immunity from taxation is not one of them.' This seems to us conclusive of the case. The grant here was *not* of ALL the rights and *privileges* of the Nashville and Chattanooga Company, but of such *as were necessary for the purpose of making and using the road*, or, in other words, the *franchises* of the company which do not include immunity from taxation."

The original charter of the Edgefield and Kentucky Railroad, like the charter of the Knoxville and Ohio Railroad, only gave such of the powers, rights, and privileges of the Nashville and Chattanooga Railroad as were necessary for the purpose of "making and using its road"; and under the case of Morgan *v.* Louisiana this would not have carried with it an exemption from taxation; but, as if for the very purpose of supplying the omission, the amendment of the charter of the Edgefield and Kentucky Railroad gave to it ALL the rights and *privileges* of the Nashville and Chattanooga Railroad Company, and therefore this case,

instead of falling under the cases of Morgan *v.* Louisiana and Railroad Companies *v.* Gaines, falls under the case of Humphrey *v.* Pegues, recognized as a still existing authority by both of those cases.

The Supreme Court of Tennessee, in their opinion in this case, feeling the force of the authorities relied upon by us, say, that "however comprehensive a meaning may have been given to the term privilege by the courts of other States, or by lexicographers, we are constrained to use it in the restricted sense and meaning given to [it in] our own laws, and especially by the Constitution of the State." That it was not intended or understood to be sufficient by the framers of our Constitution of 1834 to embrace exemptions, is made clear and indisputable by reference to section 7 of article XI of that instrument, by which it is ordained: "The Legislature have no power to pass any law granting to any individual or individuals rights, privileges, immunities, or exemptions other than such as may be by the same law extended to any member of the community who may be able to bring himself within the provisions of such law; provided always the Legislature shall have power to grant such charters of incorporation as they may deem expedient for the public good."

"A Legislature acting under this Constitution for its powers, and as defining its duties, must be conclusively presumed to have used a word or term of the Constitution in the sense and with the meaning given it by that Constitution." The argument is that the solitary clause quoted from the Constitution of 1834 uses the terms "privilege" and "exemption" to perform distinct offices, and to convey different meanings, therefore acts of the Legislature passed twenty years afterwards must be presumed to have used the word privilege as having a meaning different from exemption.

With the utmost respect for the Supreme Court of Ten-

nessee, we submit that the rule of construction adopted by them is manifestly erroneous.

First. The charter under which the Southeastern Railway claims in the case at bar is not only a statute but a contract, and a contract on the faith of which that company has expended vast sums of money and incurred heavy responsibilities. One well-settled canon of construction, as well of contracts as of statutes, is that they are to be read according to the "*natural* and obvious import of their language." Words are to be taken in their *ordinary* grammatical sense, without resorting to subtle and forced constructions for the purpose of either limiting or extending their operation. (Sedgw. Stat. and Const. Law, p. 260.)

The St. Louis and Southeastern Railway, before acquiring the road for which exemption is claimed, was told by all the standard authorities that the obvious and natural meaning of the word "privilege" embraced an immunity from taxation. In fact, this court had said that "a more important or more comprehensive privilege than a perpetual exemption from taxation can scarcely be imagined." (16 Wall., 247.) and after purchasers have invested their money on the "natural and ordinary meaning of the word as given by the courts of other States, or by lexicographers," it will not do for the Supreme Court of Tennessee, "by a subtle and forced construction," to limit its meaning to the restricted sense in which it is found in a single clause of a State Constitution, of which no citizen of the United States outside of Tennessee is bound to take notice.

Second. Even when construing a single statute or contract, Vattel says: "It does not follow, either logically or grammatically, that because a word occurs in a sentence with definite sense, therefore the same sense is to be adopted in every sentence in which it occurs."

Sedgw. Stat. and Const. Law, 264.

Mr. Story adds, "that it does not follow that because a word is found in one *connection in a Constitution* with a definite sense, therefore the same sense is to be adopted in every other connection in which it occurs." Mr. Cooley, commenting on this language, says that while, as a general thing, it is to be supposed that the same word is used in the same sense wherever it occurs in a Constitution, yet the rule is one of presumption merely; its force is but slight, and it must readily give way to a different intent appearing on the instrument.

Cooley's Const. Lim., (1st ed.,) p. 62.

Mr. Story gives many instances where, in the National Constitution, the same word is very plainly used with different meanings. (See Story's Const., sec. 454.) And no better illustration can be afforded than the Constitution of Tennessee in its use of this very word privilege.

Article XI, section 7, quoted above by the Supreme Court of Tennessee, prohibits the Legislature from passing any law granting to any individual or individuals rights, privileges, immunities, or exemptions other than such as may be by the same extended to any member of the community who may be able to bring himself within the provisions of such law. The word "rights" is used in a generic sense, embracing whatever may be "lawfully claimed"; the word "privileges" is used to designate special rights belonging to the individual or class and not the mass. Rights are based upon general laws—privileges upon special or private laws. (Paschal's Annotated Constitution, p. 225.) Immunities and exemptions may rest upon general or special laws. The exemption of certain property from execution rests upon a general law; the exemption of the property of a particular corporation from taxation rests upon a special or private law.

The Constitution did not intend to draw a distinction between privileges on the one hand and exemptions and

immunities on the other, but to ordain that whether exemptions and immunities were claimed as "rights" under a law general in its form, or as "privileges" under a law confessedly special or private, they should be unavailing unless the law be such as may be extended to any member of the community who may be able to bring himself within its provisions. The result of this would have been to have prohibited the formation of all private corporations, and this is why the proviso was added, that "the Legislature shall have power to grant such charters of incorporation as they may deem expedient for the public good."

Article X, section 2, ordains that members of the Legislature shall take an oath that they will not assent to any bill, &c., that shall have a tendency to abridge the "rights and privileges" of the people. Here again the word "rights" is used to designate that which is common to the mass; while the word "privileges" is used to designate what is peculiar to an individual or a class.

Article II, section 28, authorizes the Legislature to tax "privileges." In this place the word is used to designate any occupation which cannot be legally followed except under license.

Article I, section 30, ordains that no hereditary emoluments, *privileges*, or honors shall ever be granted or conferred in this State; article I, section 15, ordains that the *privilege* of the writ of *habeas corpus* shall not be suspended unless, &c.; and article I, section 8, ordains that no man shall be deprived of his freehold, liberties, or *privileges* unless by judgment of a jury, &c. In these three sections it is manifest that the word "privilege" is used in the sense of prerogative.

Article II, section 13, ordains that Senators, &c., shall be *privileged* from arrest, &c., and article IV, section 3, ordains that electors shall be *privileged* from arrest, &c. It is clear that the word is here used in the sense of an exemption or immunity.

We see, then, that the Supreme Court of Tennessee is mistaken, and that the word "privilege" has no fixed definite meaning in the Constitution of Tennessee. That while it is always used to denote something personal or peculiar to the individual or class — as contradistinguished from "rights" based upon general laws, common to all—yet it may be positive, as the privilege to sue out a *habeas corpus*, or negative, as the exemption or immunity from arrest. It is difficult to see why an exemption from arrest is a privilege, and yet an exemption from taxation is not.

From an inspection of the statutes of Tennessee, it will be found, as stated above, that exemptions from taxation were expressly granted in the charters of the Nashville and Chattanooga Railroad Company and of the Memphis and Charleston Railroad Company, which were passed in 1845–46, and contained over thirty sections each; that they were among the first railroads chartered in Tennessee, and, for brevity sake, the charters of most of the companies subsequently incorporated simply refer to one of the older charters and give to the new companies the same rights, powers, and privileges. Neither the State of Tennessee, nor the counties, nor cities of the State ever claimed the right to tax any of these roads until within the last few years, and in the meantime many of the roads have been sold to *bona-fide* purchasers. It is respectfully submitted that this practical construction of the meaning of the word "privilege," as embracing an exemption from taxation, continuing for more than twenty years, is entitled to great, if not controling, weight.

K. & O. R. R. *v.* Hicks, 1 Legal Reporter, 343–4.
Chicago *v.* Sheldon, 9 Wall., 54.
Irwin *v.* U. S., 16 How., 524.

Having shown, as we think, that under the word "privilege" the Edgefield and Kentucky Railroad became entitled to the same exemption from taxation which was given

to the Nashville and Chattanooga Railroad, we now submit that said exemption was not personal to the company nor to the original corporators, but was attached to the road itself, and followed it into the hands of the present owners. We recall the attention of the court to the precise language of the exemption. It is as follows:

"The capital stock of said company shall be forever exempt from taxation; THE ROAD, with all its fixtures and appurtenances, including workshops, warehouses, and vehicles of transportation, shall be exempt from taxation for the period of twenty years from the completion of the road, and no longer. (Acts of Tennessee, 1845–46, page 27, section 38.)

First. It will be noticed that the *stock* is forever exempt from taxation, while the road, its fixtures, &c., is exempt for only twenty years. It is impossible to suppose that the Legislature intended the exemption of the stock to be personal to the original corporators who subscribed for it, because section 16 of the charter of the Nashville and Chattanooga Railroad Company provides that "the stock of said company may be transferred in such manner and form as may be directed by the by-laws of said corporation." (Acts of Tennessee 1845–46, p. 22, sec. 16.) It was, therefore, contemplated that the stock should be transferred by the original corporators to other persons, and, as a matter of fact, it has been, and is now, sold in the market from hand to hand every day, and yet under the exemption aforesaid the stock is exempt in the hands of any one who may now own it.

Second. If it was not intended by the Legislature that the exemption of the stock which was the individual property of the original corporators should be personal to them, but should attach to the stock and follow it, it is difficult to see why the exemption of the road which was not the individual property of said corporators should be regarded

as personal to them and to cease the moment that they parted with their interest in it. Besides, the exemption of the stock and the exemption of the road occur in the same clause, in the same sentence, and in absolute juxtaposition with each other; and why the exemption of the road should be personal to the corporators when the legal title of the road was in the corporation, and yet the exemption of their own stock was not made personal to them, I cannot imagine.

Third. If the exemption of the road was not intended to be personal to the original corporators, it is absurd to suppose that it was personal to the corporation. A corporation is a mere legal entity, and the moment you disassociate it from the individual corporators who compose it, it becomes a mere shadow and a name. Is it possible to suppose that the Legislature intended that the exemption of the road should cease if, for any reason, the corporate name of the Nashville and Chattanooga Railroad Company should be, as it was in fact, afterwards changed?

It was a matter of no concern to the Legislature whether the road was operated under one corporate name or another. The object of the Legislature was to induce the construction of the road and to encourage its subsequent operation. Neither did the Legislature care as to who should be the owners of the stock so long as the road was operated by some responsible party in accordance with the provisions of the charter. The State and the people would get all the benefits without the slightest regard to who were the stockholders or what was the corporate name.

Fourth. If the exemption of the road was not personal to the original corporators and not personal to the original corporate name, it follows of necessity that it could not have been personal to any one, and therefore must have attached to the road itself.

Fifth. If it had been the intention of the Legislature to confine the exemption to the Nashville and Chattanooga Railroad Company, it could have been done by enacting that the road, with all its fixtures, &c., should be exempt for a period of twenty years, provided the Nashville and Chattanooga Railroad Company should continue to own it for that length of time.

Or if it had enacted that the road should be exempted for twenty years for the benefit and behoof of the Nashville and Chattanooga Railroad Company, it might have been argued with some force that, as the exemption was manifestly for the benefit of that particular company, it would cease so soon as that particular company ceased to own the road; but even that position could not be maintained under the decision of the Supreme Court of the State of Tennessee. In the case of The State *v.* Hicks, Ewing & Co., decided by the Supreme Court of Tennessee in 1836, and reported in 9 Yerger, 486, it appears that a tract of land was vested in certain trustees of Davidson Academy by an act of the Legislature of North Carolina, passed in 1785. The sixth section of the act is as follows:

"That no lands, tenements, or hereditaments which may be vested in the trustees of the county of Davidson *for the sole use and behoof* of the academy shall be subject to any tax for the space of ninety-nine years."

The lands were afterwards sold by the trustees and passed into the hands of private persons, and an attempt was made to tax them. The Supreme Court say: "It is admitted by the Attorney-General, that if the exemption from taxation is attached to the land, it is a privilege which will descend to a purchaser from the trustees of the academy. It seems to us that there can be no doubt, from the wording of the sixth section of the act, that it was the intention of the Legislature to exempt the land from taxation absolutely for the term mentioned, no matter into

whose hands soever it might come; for by the provisions of the second section of the same act the trustees are empowered to sell any lands of the institution unless the will of the grantee forbids it; and if the Legislature had desired that the lands given by the State or acquired from any other source should only be exempt from taxation so long as they remained the property of the institution, and no longer, they would have so provided in express terms." It will be noticed that the word "privilege" was evidently regarded by the court as embracing an exemption from taxation; and applying the reasoning of that case to this, we say that if it had been the intention of the Legislature that the exemption of the road should continue only so long as it remained the property of the Nashville and Chattanooga Railroad Company, "they would have so provided in express terms."

In the case of The State of New Jersey *v.* Wilson, 7 Cranch, 164, decided by this court in 1812, it appeared that a tribe of Indians had claims to a considerable portion of lands in New Jersey, to extinguish which a convention was held between the Indians and commissioners appointed by the government of New Jersey, at which the Indians agreed to specify particularly the lands which they claimed, release their claim to all others, and to appoint certain chiefs to treat with the commissioners on the part of the government for the final extinguishment of their whole claim. An agreement was made that the government should purchase a tract of land *on which they might reside*, in consideration of which they would release their claim to all other lands in New Jersey south of the river Raritan. The Legislature passed an act to give effect to this agreement, and, among other provisions, it authorized the purchase of lands for the Indians, *restrained them from granting leases or making sales*, and enacted "that the lands to be purchased *for the Indians* aforesaid shall not hereafter be subject to any tax; any law, usage, or custom to the contrary thereof

in anywise notwithstanding." The Indians continued in possession of the lands for nearly fifty years, when the Legislature of New Jersey authorized them to sell their lands; but the act contained no expression in any manner respecting "the *privilege of exemption from taxation*," which was annexed to those lands by the act under which they were purchased and settled on the Indians. Chief Justice Marshall uses this langrage:

"The *privilege*, though for the benefit of the Indians, is annexed by the terms which created it to the land itself, not to their persons; it is for their advantage that it should be annexed to the land, because in the event of a sale, on which alone the question could become material, the value would be enhanced by it.

"It is not doubted but that the State of New Jersey might have insisted on a surrender of this *privilege* as the sole condition on which a sale of the property should be allowed, but this condition has not been insisted on. The land has been sold with the assent of the State, with all its privileges and immunities; the purchaser succeeds, with the assent of the State, to all the rights of the Indians; he stands, with respect to the land, in their place, and claims the benefit of their contract. This contract is certainly impaired by a law which would annul this essential part of it."

That case is a further authority for the position that the word "privilege" embraces an exemption from taxation; and applying the reasoning of that case to this, we say that the State of Tennessee, under the act of 1870, sold the delinquent railroads, with all their privileges and immunities, to the purchasers; that the purchasers succeeded, with the assent of the State, to all the rights of the original company; that they stand, with respect to this road, in the place of the original company; and claim the benefit of the contract between the State and the original company; that the privilege of exemption, though it may have been given in the charter of the original company, was annexed, by the very terms which created it, to the road itself, and

was not to the original company or its corporators, for the language is THAT THE ROAD, its fixtures and appurtenances, &c., shall be exempt.

It has been suggested that, if this argument is to obtain, it would have been possible for the original company to have purchased any number of vehicles of transportation, and afterwards resold them to others with the exemption from tax attached to them, whereby such other persons would have received the benefit which was intended by the Legislature to be confined to the original company. But we submit, with all confidence, that the suggestion totally misconceives the basis of our argument.

The language of the act is, that the road, with all its fixtures and appurtenances, including workshops, warehouses, and vehicles of transportation, shall be exempt, &c. The very moment that a vehicle of transportation ceases to be a fixture or an appurtenance of that road, the exemption from taxation ceases; but so long as the vehicle continues to be a fixture or appurtenance of that road, the exemption continues, whether the road is owned by the original company or corporators, or not.

ED. BAXTER.

Solicitor for Plaintiff in Error.

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IN THE

Supreme Court of the United States

No. 142.

JAMES H. WILSON, Receiver of the St. Louis and Southeastern Railway,

Plaintiff in Error.

vs.

JAMES L. GAINES, Comptroller of the Treasury of the State of Tennessee,

Defendant in Error.

Supplement to Brief for Plaintiff in Error, containing the Statutes of Tennessee cited in the Brief.

Thomas McGill & Co., Law Printers, Washington, D. C.

Chapter I.

AN ACT to incorporate the Nashville and Chattanooga Railroad Company.

Section 1. *Be it enacted by the General Assembly of the State of Tennessee*, That for the purpose of establishing a communication by railroad between Nashville and Chattanooga, the formation of a company is hereby authorized, which, when formed, shall be a body corporate by the name and style of "The Nashville and Chattanooga Railroad Company," and by said corporate name shall be capable in law to buy, receive by gift, hold, sell, and convey real and personal estate as hereinafter provided, make contracts, sue and be sued, to make by-laws, and to do all lawful acts properly incident to a corporation and necessary and proper to the transaction of the business for which it is incorporated, and to have and use a common seal, and the same to alter and destroy at its pleasure, and shall have perpetual succession of members.

Sec. 2. Books for subscription of sixty thousand shares of the capital stock of said company, of twenty-five dollars each, shall be opened on the first Monday in January, 1846, and shall be kept open for six days, between the hours of ten o'clock in the morning and four o'clock in the evening of each of those days, at the following places and by the following commissioners, to wit:

At Nashville, by James Overton, John M. Hill, George W. Martin, Thomas Washington, John Shelby, Godfrey M. Fogg, John W. Walker, Jacob McGavock, J. Hugh Smith, W. W. Woodfolk, A. W. Vanleer, Samuel Watkins, Thomas Wells, John Thompson, Joseph B. Knowles, James Erwin, Felix R. Raines, Pleasant Smith, J. J. Gill, John Nicol,

West H. Humphreys, R. J. Meigs, A. V. S. Lindsley, Alexander Allison, and Robert I. Moore.

At Gallatin, by James A. Blackmore, Elijah Boddie, Henry B. Vaughn, Daniel S. Donaldson, S. R. Anderson, and William M. Blakemore.

At Shelbyville, by Robert Matthews, George Davidson, Thomas Dean, John Eakin, and W. C. Swanson.

At Gainesboro', by Thomas L. Bransford, Watson M. Cooke, Samuel E. Hare, and Richard P. Brooks.

At Lebanon, by Paulding Anderson, R. L. Caruthers, and Calvin Jackson.

At McMinnville, by George R. Smart, William Black, Jesse Locke, Philip Hoodenpyl, and L. D. Mercer.

At Franklin, by Thomas Parks, William Park, Nicholas Perkins, Samuel Crockett, and Robert C. Foster.

At Murfreesboro', by Charles Ready, Edwin A. Keeble, Marman Spence, Lewis Garner, and L. H. Carney.

At Sparta, by James Snodgrass, John Warren, and William M. Young.

At Fayetteville, by John Clark, Jr., John M. Bright, Robert Farquharson, William T. Ross, James Fulton, and William Bonner.

At Pulaski, by Andrew M. Ballentine, Thomas Martin, and Benjamin Carter.

At Winchester, by Benjamin Deckard, Mark Hutchins, James Harris, James Sharp, Thomas Wilson, and C. C. Garner.

At Chattanooga, by Robert M. Hooke, Benjamin Chandler, and John P. Long.

At Jasper, by Jackson Pryor, Daniel R. Rawlings, and John Herriford.

At Lewisburg, by Benjamin Williams, Ephraim Hunter, James V. Ewing, Morgan Fitzpatrick, and Henry Hardin.

SEC. 3. The said commissioners, or a majority of them, at each of the places aforesaid, shall receive subscriptions for stock in the said railroad company during the time the

said books are directed to be kept open, and on each share so subscribed shall demand and receive the sum of fifty cents, without which the subscription shall be void.

SEC. 4. As soon as the time for receiving subscriptions as aforesaid shall have expired, the said commissioners shall respectively deposit all the money so received by them in some incorporated bank redeeming its notes in specie, to the credit of the Nashville and Chattanooga Railroad Company, and subject to the order of the president of the board of commissioners hereinafter appointed, and shall also forward a correct list of all the subscribers to the said stock, with the number of shares each subscriber has taken, to a board of commissioners, to be composed of the following persons: John M. Bass, John M. Hill, Francis B. Fogg, Andrew Ewing, A. O. P. Nicholson, V. K. Stevenson, John Bell, Willoughby Williams, William Nichol, S. D. Morgan, Joseph T. Elliston, Joseph W. Horton, James A. Porter, James Overton, and John Shelby, who may establish rules to govern their proceedings, choose their own president, and appoint such other officers and agents as they may think proper, and prescribe their duties, and who, or a majority of whom, shall meet at Nashville on the third Monday in January next, ascertain the whole number of shares taken in the said company, and publish the same in some newspaper printed in Nashville on or before the fourth Monday in January next; and if the number of four thousand shares shall have been subscribed, on each of which there shall have been paid the sum of fifty cents, the Nashville and Chattanooga Railroad Company shall be regarded as formed, and thenceforth, and from the day of the closing of the books of subscription as aforesaid, the said subscribers to the stock shall form a body politic and corporate in deed and in law, by the name and for the purpose aforesaid, and in all things to be represented by the board of commissioners aforesaid until the election of a board of directors as hereinafter prescribed.

SEC. 5. If on closing the books aforesaid the number of four thousand shares shall not have been subscribed, then and in that case the said board of commissioners, by themselves or their agents, may receive subscriptions till the number of four thousand shares be taken, and whenever that number of shares shall be subscribed the company shall be considered as formed, as having a corporate existence as aforesaid, and of which notice shall be given as hereinbefore directed, and may proceed to survey the route for the road and make an estimate of the cost of its construction. Nevertheless, no conclusive and binding location of the road shall be made by the board of commissioners, but the same be left to the determination of the first board of directors chosen by the stockholders. And the said board of commissioners may, by themselves or their agents, at such times and places as they may think proper, and upon such terms as to time and manner of payment as they may deem expedient, receive additional subscriptions until the number of forty thousand shares shall have been subscribed, upon which the company may be formed, and the subscribers shall thenceforth form a body corporate as aforesaid: *Provided*, The same shall be done on or before the first day of January, 1848. And for the residue of the original number of sixty thousand shares the said corporation, when organized, may in like manner receive additional subscriptions.

SEC. 6. In case more than sixty thousand shares shall have been subscribed on closing the books when they are first opened, the shares shall be reduced to that number by deducting the surplus shares from the highest subscribers, placing them on equality of numbers as far as can be done; and after such reduction the holders of the remaining shares shall form the company, and be interested therein in proportion to the number of shares which they may then respectively hold.

SEC. 7. If, on closing the books on the first day of Jan-

uary, eighteen hundred and forty-eight, the number of forty thousand shares shall not have been subscribed, the money paid by each subscriber shall be returned to him by the said board of commissioners, after defraying the expenses of opening the books, and of making a survey and map of the route and estimate of the cost of the road, which the said commissioners are hereby authorized to have made as soon as practicable.

SEC. 8. The affairs of said company shall be managed by a board of directors, to consist of fifteen, who shall be chosen by the stockholders from their own body, and a president of the company shall be elected by the directors from among their own members, in such manner as the regulations of the corporation shall prescribe.

SEC. 9. As soon as the number of forty thousand shares shall have been subscribed, it shall be the duty of the commissioners appointed to declare the same, to appoint a time for the stockholders to meet in Nashville, and give notice thereof by publication in some of the newspapers of Nashville, at which time and place the said stockholders, in person or by proxy, shall proceed to elect the directors of the company, and to enact all such regulations, rules, and by-laws as may be necessary for the government of the corporation and the transaction of its business. The persons elected directors at this meeting shall serve for such period, not exceeding one year, as the stockholders may direct; and at this meeting the stockholders shall fix on the day and place or places where the subsequent elections of directors shall be held, and such elections shall thenceforth be annually made. But if the day of annual election should pass without any election of directors, the corporation shall not be thereby dissolved, but it shall be lawful on any other day to hold and make such elections in such manner as may be prescribed by a by-law of the corporation.

SEC. 10. The board of directors may fill up all vacancies which may occur in it during the period for which

their board shall have been elected; and in the absence of the president may fill his place by electing a president *pro tempore*.

SEC. 11. All contracts and agreements authenticated by the president of the board shall be binding on the company without seal, or such other mode of authentication may be used as the company by their by-laws may adopt.

SEC. 12. The board of directors shall not exceed, in their contracts, the amount of the capital of the corporation, and of the funds which the company may have borrowed and placed at the disposal of the board; and in case they should do so, the president and directors who may be present at the meeting at which such contract or contracts so exceeding the amount aforesaid shall be made, shall be jointly and severally liable for the excess both to the contractor or contractors and the corporation: *Provided*, That any one may discharge himself from such liability by voting against such contract or contracts, and causing such vote to be recorded on the minutes of the board and giving notice thereof to the next general meeting of the stockholders.

SEC. 13. After the route of such railroad shall have been accurately surveyed and adopted, and a plat thereof deposited in the office of the Secretary of State, it shall not be lawful for any other railroad to be built, cut or constructed, in any way or manner, or by any authority whatsoever, running laterally within twenty miles of the route so adopted, unless by said company, or with the consent of the board of directors thereof for the time being.

SEC. 14. The said company shall have the exclusive right of transportation or conveyance of persons, goods, merchandise, and produce over the said railroad by them to be constructed: *Provided*, That the charge of transportation or conveyance shall not exceed thirty-five cents per hundred pounds on heavy articles, and ten cents per cubic foot on articles of measurement for every hundred miles, and five

cents a mile for every passenger: *and provided also*, That the said company may, when they see fit, farm out their rights of transportation on said road, subject to the rates above mentioned.

SEC. 15. The board of directors may call for the payment of twenty-four and a half dollars on each share of stock in sums not exceeding two dollars in every thirty days: *Provided*, That twenty days' notice be given of such call in at least one public newspaper of the State in which any of the stockholders may reside; and a failure to pay or secure to be paid, according to the rules of the company, any of the installments so called, as aforesaid, shall induce a forfeiture of the share or shares on which default shall be so made, and all payments thereon, and the same shall vest in and belong to the company, and may be restored to the owner or owners by the board of directors, if they deem proper, on the payment of all arrears on such shares, and legal interest thereon; or the directors may waive the forfeiture after thirty days' default, and sue the stockholders for the installments due at their discretion.

SEC. 16. The stock of said company may be transferred in such manner and form as may be directed by the by-laws of the said corporation.

SEC. 17. The said company may at any time increase its capital to a sum sufficient to complete the said road, and stock it with every thing necessary to give it full operation and effect, either by opening books for new stock, or by selling such new stock, or by borrowing money on the credit of the company, and on the mortgage of its charter and works; and the manner in which the same shall be done in either case shall be prescribed by the stockholders at a general meeting; and any State, or any citizen, corporation, or company of this or any other State or country, may subscribe for and hold stock in said company, with all the rights and subject to all the liabilities of any other stockholder.

SEC. 18. The board of directors shall once in every year, at least, make a full report on the state of the company and its affairs to a general meeting of the stockholders, and oftener if directed by a by-law, and shall have power to call a general meeting of the stockholders when the board may deem it expedient.

SEC. 19. No person but a citizen of the United States, and being a *bona-fide* stockholder in his own right, of at least forty shares, which he shall have held at least three months previous to his election (except at the first election), shall be president or a director of the company; nor shall any stockholder vote in person or by proxy at any general or other election (except the first) who shall not have held in his own right the shares on which he offers to vote, at least three months previous to such election.

SEC. 20. Stockholders may vote in person or by proxy, and in the election of directors, and in voting on all questions which come before a meeting of the stockholders, or which may be submitted to the decision of the stockholders in any other manner, the vote shall be taken according to the following scale: the owner of one or two shares shall be entitled to one vote; the owner of not less than three nor more than four shares shall be entitled to two votes; the owner of not less than five nor more than six shares shall be entitled to three votes; the owner of not less than seven nor more than eight shares to four votes; the owner of not less than nine nor more than eleven shares to five votes; the owner of not less than twelve nor more than fifteen shares to six votes; the owner of not less than sixteen nor more than twenty shares to seven votes; the owner of not less than twenty-one nor more than twenty-six shares to eight votes; the owner of not less than twenty-seven shares nor more than thirty-three to nine votes; the owner of not less than thirty-four nor more than forty shares to ten votes; and the owner of every ten shares above forty shall be entitled therefore to one vote: *Provided*, That no individual, corporation,

or company shall be entitled to more than five hundred votes.

SEC. 21. The said company may purchase, have and hold in fee, or for a term of years, any lands, tenements, or hereditaments which may be necessary for said road or appurtenances thereof, or for the erection of depositories, storehouses, houses for the officers, servants or agents of the company, or for workshops or foundries to be used for the said company, or for procuring timber, stones or other materials necessary for the construction of the road or its appurtenances, or for effecting transportation thereon.

SEC. 22. The said company shall have the right, when necessary, to construct the said road, or any branch thereof, across or along any public road or water course: *Provided*, That the said road and the navigation of such water course shall not be thereby obstructed; and *provided further*, That such railroad shall not be located so near any turnpike road as to injure or prejudice the interests of the stockholders in such turnpike road, except upon such terms as may be agreed upon by the president and directors of the same, on behalf of the stockholders.

SEC. 23. The said company may purchase, have and hold any bridge or turnpike road over which it may be necessary to carry the said railroad; and when such purchase is made to hold the said bridge or turnpike road on the same terms, and with all rights which belong to the individual, individuals, or corporation from which such purchase may be made: *Provided*, That the said company shall not obstruct any public road without constructing another as convenient as may be.

SEC. 24. Where any lands or right of way may be required by the said company for the purpose of constructing their road, and for want of agreement as to the value thereof, or from any other cause, the same cannot be purchased from the owner or owners, the same may be taken at a valuation to be made by five commissioners, or a majority

of them, to be appointed by the Circuit Court of the county where some part of the land or right of way is situated, and the said commissioners, before they act, shall severally take an oath before some justice of the peace faithfully and impartially to discharge the duty assigned them. In making the said valuation, the commissioners shall take into consideration the loss or damage which may occur to the owner or owners in consequence of the land being taken or the right of way surrendered, and also the benefit and advantage he, she, or they may receive from the erection or establishment of the railroad or works, and shall state particularly the nature and amount of each, and the excess of loss and damage over and above the benefit and advantage shall form the measure of valuation of the said land or right of way. The proceedings of the said commissioners, accompanied with a full description of the said land or right of way, shall be returned, under the hands and seals of a majority of the commissioners, to the court from which the commission issued, there to remain of record. In case either party to the proceedings shall appeal from the valuation to the next session of the court granting the commission, and give reasonable notice to the opposite party of such appeal, the court shall order a new valuation to be made by a jury, who shall be charged therewith in the same term, or as soon as practicable, and their verdict shall be final and conclusive between the parties, unless a new trial shall be granted; and the lands or right of way, so valued by the commissioners or jury, shall vest in the said company in fee-simple, so soon as the valuation may be paid, or when refused, may be tendered. Where there may be an appeal, as aforesaid, from the valuation of commissioners by either of the parties, the same shall not prevent the works intending to be constructed from proceeding; but where the appeal is by the company requiring the surrender, they shall be at liberty to proceed in their works only on condition of giving to the opposite party a bond,

with good security, to be approved of by the clerk of the court where the valuation is returned, in a penalty equal to double the said valuation, conditioned for the payment of said valuation and interest, in case the same be sustained; and in case it be reversed, for the payment of the valuation thereafter to be made by the jury and confirmed by the court: *Provided*, That when the land cannot be had by gift or purchase, the operations of the work are not to be hindered or delayed during the pendency of any proceeding to assess its value as aforesaid; nor shall any injunction or supersedeas be awarded by any judge or court to delay the progress of said work.

SEC. 25. In the absence of any contract with the said company in relation to lands through which the said road may pass, signed by the owner thereof, or by his agent, or any claimant or person in possession thereof, which may be confirmed by the owner, it shall be presumed that the land upon which the said road may be constructed, together with a space of one hundred feet on each side of the centre of said road, has been granted to the company by the owner thereof, and the said company shall have good right and title thereto, and shall have, hold, and enjoy the same as long as the same be used only for the purposes of the road, and no longer, unless the person or persons owning the said land at the time that part of the road which may be on said land was finished, or those claiming under him, her, or them, shall apply for an assessment for the value of the said lands, as hereinbefore directed, within five years next after that part of said road was finished. And in case the said owner or owners, or those claiming under him, her, or them, shall not apply for such assessment within five years next after the said part was finished, he, she, or they shall be forever barred from recovering the said land, or having any assessment or compensation therefor: *Provided*, Nothing herein contained shall affect the right of

femmes-covert or infants until two years after the removal of their respective disabilities.

SEC. 26. If any person shall intrude upon the said railroad, or any part thereof, by any manner of use thereof, or of the rights and privileges connected therewith, without the permission, or contrary to the will of said company, he, she, or they shall forthwith forfeit to the said company all the vehicles that may be so intruded on said road, and the same may be recovered by suit at law; and the person or persons so intruding may also be indicted for misdemeanor, and, upon conviction, fined and imprisoned by any court of competent jurisdiction.

SEC. 27. If any person shall willfully and maliciously destroy or in any manner hurt, damage, or obstruct the said railroad, or any bridge, or any vehicle used for or in the transportation thereon, such person or persons so offending shall be liable to be indicted therefor, and on conviction shall be imprisoned not more than six nor less than one month, and pay a fine not less than twenty dollars; and shall be further liable to pay all the expenses of repairing the same; and it shall not be competent for any person so offending against the provisions of this clause to defend himself by pleading or giving in evidence that he was the owner, or agent or servant of the owner, of the land where such destruction, hurt, damage, injury, or obstruction was done or caused, at the time the same was caused or done.

SEC. 28. Every obstruction to the safe and free passage of vehicles on the said road shall be deemed a public nuisance and may be abated as such by an officer, agent, or servant of the company, and the person causing such obstruction may be indicted and punished for erecting a public nuisance.

SEC. 29. The said company shall have the right to take, at the store-houses they may establish or annex to their railroad, all goods, wares, merchandise, and produce in-

tended for transportation, prescribe the rules of priority, and charge and receive such just and reasonable compensation for storage as they, by rules, may establish (which they shall cause to be published), or as may be fixed by agreement with the owner, which may be distinct from the rates of transportation: *Provided*, That the said company shall not charge or receive storage on goods, wares, merchandise, or produce which may be delivered to them at their regular depositories for immediate transportation, and which the company may have the power of transporting immediately.

SEC. 30. The profits of the company, or so much thereof as the board of directors may deem advisable, shall, when the affairs of the company will permit, be semi-annually divided among the stockholders in proportion to the stock each may hold.

SEC. 31. The said company is hereby expressly prohibited from carrying on any banking operations, but may effect insurance on lives and property transported on the road.

SEC. 32. Whenever, in the construction of said road, it shall be necessary to cross or intersect any established road or way, it shall be the duty of the company to construct said road across such established road or way so as not to impede the passage or transportation of persons or property along the same; or where it shall be necessary to pass through the land of any individual, it shall be their duty to provide for such individual a proper wagon-way or ways across said road from one part of his land to the other.

SEC. 33. The said company shall possess such additional powers as may be convenient for the due and successful execution of the powers granted in this charter, and for the successful construction and management of the work.

SEC. 34. This charter shall be amendable, from time to time, by the Legislature, whenever the president and directors shall unanimously petition for amendments, specify-

ing in the petition the nature of such amendments; and when such amendments shall be adopted by the Legislature and submitted to the directory, and be accepted and adopted unanimously by the president and directors, they shall be obligatory on the stockholders, and not otherwise.

SEC. 35. The president, directors, clerks, agents, officers, and servants of said company shall be exempt from military duty, except in cases of invasion or insurrection, and shall also be exempt from serving on juries and working on public roads.

SEC. 36. The company shall have full power and authority to purchase and own such number of slaves as may be necessary for the construction of the said road and for keeping the same in repair.

SEC. 37. If by decree or otherwise the said corporation shall be dissolved, the president and directors of said company are created trustees with such powers only as may be necessary to collect the debts due the company, preserve the property, pay the debts, and distribute the property and effects of the company to those who may be entitled thereto under the charter.

SEC. 38. The capital stock of said company shall be forever exempt from taxation, and the road, with all its fixtures and appurtenances, including workshops, warehouses, and vehicles of transportation, shall be exempt from taxation for the period of twenty years from the completion of the road, and no longer.

SEC. 39. The railroad authorized by this act shall be commenced within three years after the passage of this act, and shall be finished within six years thereafter; otherwise the charter hereby granted shall be void.

SEC. 40. Any individual or individuals, company or body corporate, with permission of the Legislature of this State, may hereafter construct branches to unite with the said Nashville and Chattanooga Railroad; and it shall be the duty of said company, when required, to receive on their

road the full loaded freight-cars from such branches, and transport the same to their destination, and to return them, without changing the loads thereof, or charging for the transportation of the goods, wares, merchandise, and produce therein, any greater rate of freight than they charge for similar goods, wares, merchandise, and produce in their own cars: *Provided*, That the company shall not be compelled to receive such cars on their road, unless they are constructed in the same manner, and are of equal strength with their own cars, of which the engineer of the main road shall be the judge: *and provided*, That the company shall not be required to receive any car from such branches without receiving payment for at least twenty miles' transportation; *and provided also*, That the said company shall be entitled in all respects to similar and equal privileges on any branches constructed to unite with their road, subject to the same restraints.

BROOKINS CAMPBELL,
Speaker of the House of Representatives.
H. M. WATTERSON,
Speaker of the Senate.

Passed December 11, 1845.

CHAPTER CXCII.

AN ACT to charter the Nashville and Southern Railroad Company.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That a body politic and corporate is hereby constituted, by the name and style of The Nashville and Southern Railroad Company, for the purpose of constructing a railroad from Nashville or South Nashville to the Tennessee River, or to the line between the States of Tennessee and Mississippi, or to the line between the States of Tennessee and Alabama, in the direction of Florence, in

the State of Alabama, so as to connect with any railroad that may be constructed from New Orleans, Mobile, or Memphis, and said company shall have and enjoy all the rights, powers, and privileges, and be subject to all the liabilities and restrictions prescribed in the charter of the Nashville and Chattanooga Railroad Company; and in the various amendments thereto, except as herein further provided; and the said company or companies that may construct said railroad or railroads from New Orleans, Memphis, or Mobile shall have power to extend their said railroad or railroads to the Tennessee River to make said connections.

SEC. 2. *Be it enacted*, That the capital stock of said company shall be two millions of dollars, to be divided into shares of fifty dollars each, and the company shall have power to increase the capital stock to three millions of dollars, and whenever six thousand shares of the capital stock are subscribed for, said company may organize by the election of a board of directors, who shall elect a president from their number, as prescribed in the charter of the Nashville and Chattanooga Company, and at all meetings of the stockholders, where a vote is to be taken, each stockholder shall be entitled to one vote for each share of stock held by him.

SEC. 3. *Be it enacted*, That S. D. Morgan, V. K. Stevenson, A. V. S. Lindsley, Alexander Allison, A. O. P. Nicholson, A. Thompson, John W. Cheairs, Spivy McKissick, John Baird, John M. Bass, W. N. Bilbo, James M. Granberry, William J. Polk, S. D. Frierson, R. H. Bostick, T. F. Atkinson, William Harrison, Sr., A. R. Cartwright, Thomas D. Deavenport, B. M. Moore, Wm. Parks, Daniel Bently, Dr. Haddox, Robert A. Hill, A. G. McDougal, John Stribling, Jesse S. Ross, Wm. H. Cherry, Dr. Cochran, T. A. Jones, and C. S. Broyles, be, and they are hereby, constituted a board of commissioners, a majority of whom may act, to manage all of the affairs of said company, until it

shall be organized by the election of a board of directors as aforesaid, to procure the subscriptions of stock by the appointment of an agent or agents for that purpose, or in such manner as they may deem best; to provide for experimental surveys of routes for said railroad, and for the payment for making said surveys and for procuring said subscriptions out of such calls on the stock subscribed for as they may deem advisable, and out of the funds hereafter provided for, but they shall not be compelled to require any part of the stock subscribed for to be paid in cash at the time it is subscribed for, and at all meetings of said commissioners they may vote in person or by proxy in relation to the affairs of the company before its organization as aforesaid, and they shall require each subscriber to execute his note to the company for one dollar for each share of stock subscribed for by him, and it shall be lawful for the same to be sued for and recovered of such subscriber in the name of the company, whether organized as aforesaid or not, to be used, when paid, in defraying the expenses incurred by the commissioners in the manner aforesaid.

SEC. 4. *Be it enacted*, That if said company should run the said railroad continuously on the line of any turnpike road, the company shall have power to do so, upon such terms as the company may agree upon with said turnpike company, by permitting such turnpike company to subscribe for such amount of stock in said railroad company as the parties may agree upon in lieu of the value of or damage to said turnpike road or otherwise, but said railroad company shall not be liable to pay to any turnpike company any damages for running laterally with, parallel, or adjacent to any turnpike road, unless the railroad should be run continuously upon the bed of such turnpike road.

SEC. 5. *Be it enacted*, That it shall not be lawful for said company to make any unequal discriminations in their charges for freight or passage, or in the transportation of

freight or passengers, in favor of either of the roads to be built from New Orleans, Mobile, or Memphis over the other.

SEC. 6. *Be it further enacted*, That said company shall have ten years to complete their said railroad, and whenever five miles of the road shall have been completed, said company may carry on its regular business upon the same, and said company shall have five years in which to begin the construction of said railroad, and shall have power to build a branch railroad to the Alabama State line to connect with any railroad that may be constructed from Florence to the said State line in the direction of Lawrenceburg. And if said company shall construct said main trunk road to the line between the States of Tennessee and Alabama, in the direction of Florence, then said company shall have power to build a branch road to the Tennessee River or to the Mississippi line to make said connections.

SEC. 7. *Be it further enacted*, That the 13th section of an act passed December 11, 1845, incorporating the Nashville and Chattanooga Railroad Company, shall not be a part of this act: *Provided*, Nothing contained in this act shall be so construed as to authorize the Governor to endorse the bonds of said company.

JORDAN STOKES,
Speaker of the House of Representatives.
M. R. HILL,
Speaker of the Senate.

Passed January 1, 1852.

CHAPTER CCXXV.

AN ACT to incorporate the Edgefield and Kentucky Railroad Company, and for other purposes.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That Neill S. Brown, William B. Campbell, F. K. Zollicoffer, Russell Houston, John Shelby,

Samuel R. Anderson, William B. A. Ramsey, Nicholas Hobson, P. W. Maxey, Anthony W. Johnson, Enoch P. Connell, A. V. S. Lindsley, M. W. Wetmore, and Theodore B. Hamlin, of the county of Davidson; John J. White, Joseph C. Guild, Thomas Barry, Robert M. Boyers, William M. Blackmore, and James Gwinn, of the county of Summer; Willie Woodard, Joseph C. Stark, W. W. Pepper, H. C. Hughes, H. K. Alley, James Carden, Edward Fort, A. G. Green, and E. S. Cheatham, of the county of Robertson, with such other persons or corporations as may be associated with them, are hereby constituted a body politic and corporate by the name of The Edgefield and Kentucky Railroad Company, and by that name may sue and be sued, contract and be contracted with, and the said company are hereby authorized and empowered to construct and finally to complete a single or double railway from some central or convenient point to the city of Nashville, on the north side of the Cumberland River, to the Kentucky State line, so as to unite with any company that now is, or hereafter may be, incorporated by the Legislature of Kentucky, for the construction of a railroad from either of the cities of Lexington, Frankfort, Louisville, Danville, Bowling Green, or Henderson, in Kentucky, to the city of Nashville: *Provided*, Said company shall have the privilege of constructing and using a way for the conveyance of passengers and freights from its depot, on the north side of the river, to or from said river, so as to secure the advantages of the navigation of said river.

SEC. 2. *Be it enacted*, That the capital stock of said company shall be three hundred thousand dollars, with the privilege of increasing it to double that sum, if necessary, in shares of twenty-five dollars each.

SEC. 3. *Be it enacted*, That any two or more of the commissioners named in the first section of this act, or such persons as may be appointed by them, may open books for the subscription of stock in said company at such times and

places as they may deem proper, and so keep them open in their discretion for the term of two years; and whenever the sum of two hundred thousand dollars has been subscribed, unconditionally, the said company may be considered as formed, and the said stockholders may organize the company by the election of officers.

SEC. 4. *Be it enacted*, That the affairs of said company shall be managed by a board of seven directors, to be elected annually by the stockholders, each of whom shall be the owner, in his own right, of not less than ten shares of stock, and shall have been so the owner for three months immediately preceding said election, (except the first election,) and from said board of directors a president shall be chosen by said directors.

SEC. 5. *Be it enacted*, That it shall and may be lawful for the company hereby incorporated to negotiate with any other railroad company incorporated by the State of Kentucky, who may desire to extend their road over any portion of the route therein designated, and to transfer the rights herein conferred, either in whole or in part, to such company or companies, and thereupon such company or companies shall have the same rights, powers, privileges, and immunities in making or using said road, or any part of it, on the route aforesaid, as are herein conferred on the company incorporated by this act, and shall be subject to the same liabilities and restrictions.

SEC. 6. *Be it enacted*, That the company hereby incorporated is invested, for the purpose of making and using said road, with all the powers, rights, and privileges, and subject to all the liabilities and restrictions that are conferred and imposed on the Nashville and Chattanooga Railroad Company by an act passed on the 11th of December, 1845, so far as the same are not inconsistent with the provisions of this act.

SEC. 7. *Be it enacted*, That so soon as five miles of said road from Nashville shall have been completed, said com-

pany may commence and prosecute their business thereon: *Provided*, Said company may have a right of way to cross said river, and to convey freight and passengers to and from the depot of the Nashville and Chattanooga Railroad Company by animal power.

SEC. 8. *Be it further enacted*, That the right of way for the construction of a railroad from the line between the two States of Kentucky and Tennessee, so as to connect the town of Bowling Green, Kentucky, with the city of Nashville by railroad communication, be, and is hereby, granted to the Bowling Green and Tennessee Railroad Company, incorporated by the Legislature of Kentucky, with all the rights, powers, and privileges, and subject to all the restrictions and liabilities set forth and presented in a charter granted to said company by the Legislature of Kentucky aforesaid, March 5, 1850, excepting the proviso to the 18th section of said act, which has since been repealed by the Legislature of Kentucky.

SEC. 9. *Be it further enacted*, That said company shall have power to construct and extend their said road from the Kentucky and Tennessee line to the city of Nashville, or to intersect with any railroad within the State of Tennessee, leading from the Ohio River, or from the city of Louisville, or from the city of Cincinnati in the direction of Nashville, at such point as said company may desire.

SEC. 10. *Be it further enacted*, That the stockholders in the State of Tennessee shall be entitled to be represented in said company by directors residing in Tennessee in proportion to their stock, to be chosen by the stockholders of the company in the manner and at the time the other directors are chosen.

SEC. 11. *Be it further enacted*, That the 23d, 24th, 25th, and 29th sections of the act of the 11th December, 1845, incorporating the Nashville and Chattanooga Railroad Company, be, and are hereby, made a part of said charter of the Bowling Green and Tennessee Railroad Company,

to be in force within this State, and that this act shall take effect from and after its passage.

SEC. 12. *Be it further enacted*, That the 20th section of said charter shall be void, and of no force and effect within this State, and that the State of Tennessee reserves the right to authorize railroads to be constructed in this State, parallel with said railroad from Bowling Green, at the pleasure of the Legislature thereof.

JORDAN STOKES,
Speaker of the House of Representatives.
M. R. HILL,
Speaker of the Senate.

Passed February 13, 1852.

CHAPTER VII.

AN ACT to amend the charter of the Edgefield and Kentucky Railroad Company.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That said company may have the right of extending their road from their depot in Edgefield so as to unite with the Nashville and Chattanooga Railroad, or the Nashville and Northwestern, or the Tennessee and Alabama Railroad.

SEC. 2. *Be it enacted*, That the said company shall be entitled to all the rights and privileges that were conferred upon the Nashville and Southern Railroad Company, by an act of the General Assembly of the State of Tennessee, passed January 1, 1852, entitled "An act to charter the Nashville and Southern Railroad Company."

SEC. 3. *Be it enacted*, That said company may have the right of taking subscriptions to their stock, payable in real estate at cash value.

SEC. 4. *Be it enacted*, That if said company shall grade

thirty consecutive miles of its road, commencing at Edgefield, within four years from 1st January, 1856, it shall be entitled to all the provisions of the act of the General Assembly of the State of Tennessee, passed February 8, 1854, entitled "An act to amend an act passed 11th February, 1852, entitled an act to establish a system of internal improvements in this State": *Provided*, That sufficient solvent stock is subscribed to prepare the road-bed for the iron, from Edgefield to the Kentucky State line.

SEC. 5. *Be it enacted*, That the capital stock of said company may be increased from time to time, by the board of directors, to an amount not exceeding two millions of dollars.

SEC. 6. *Be it enacted*, That the above amendments shall work no forfeiture of the charter of the Edgefield and Kentucky Railroad Company; but that the company shall be entitled to all the rights and privileges that it would have been entitled to, if said amendments had formed part of its original charter.

SEC. 7. *Be it further enacted*, That said company shall not take any real estate as subscription only for depot purposes.

SEC. 8. *Be it further enacted*, That the Edgefield and Kentucky Railroad Company shall be in like manner bound with the Louisville and Nashville Railroad Company, to cross the Cumberland River at Nashville—subject to the same provisions, liabilities, and restrictions contained in the amended charter of said Louisville and Nashville Railroad Company.

NEILL S. BROWN,
Speaker of the House of Representatives.
EDWARD S. CHEATHAM,
Speaker of the Senate.

Passed December 15, 1855.

CHAPTER LXXIX.

AN ACT authorizing the sale and transfer of the interest of the State in delinquent railroad companies.

Whereas, Under an act of the General Assembly of the State of Tennessee, passed December 7, 1867, entitled "An act to amend the Internal Improvement Laws of this State, passed February 11, 1852," the Governor, Secretary of State, and Comptroller are empowered, in their discretion, upon the failure of any of the railroad companies mentioned in said act, "for two consecutive years, to pay the interest that may accrue upon the bonds loaned to them severally," to sell the railroad track, railing, rolling stock, &c., upon such terms and conditions as they may deem best to secure the interest of the State, "and shall retain of the proceeds of said sale the amounts loaned to said companies and the interest due on the same, with expenses of said sale;" and

Whereas, The time has arrived when it is necessary to protect the interests of the State and to secure the State from loss, in consequence of the issuance of bonds to the several railroad companies of the State, that a sale should be made of the interest of the State in each and every railroad company in this State which has heretofore failed to pay the interest that has accrued on the bonds of the State loaned to it, or which may hereafter fail to pay the interest as it accrues on the bonds of the State loaned to it; and

Whereas, It is important to relieve the people of the burden now upon them, and by wise legislation endeavor to restore the public credit, which can be done by a proper enforcement of the legal rights of the State of Tennessee as against said railroad companies so in default; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the Governor of the State, Secretary of State, and Comptroller of the Treasury, and Rob-

ert J. McKinney, of Knox county, Francis B. Fogg, of Davidson county, and Archibald Wright, of Shelby county, be, and the same are hereby, appointed commissioners to sell the interest of the State of Tennessee in all the railroad companies of the State "to whom the bonds of the State have been loaned, by the act of December 7, 1867, or former acts, and which have failed, for two consecutive years, to pay the interest that have accrued upon bonds loaned to them severally;" and also in all railroad companies that may hereafter fail to pay the interest that may or has accrued on the bonds loaned to them severally, or that are now in default of payment of the interest which has accrued upon the bonds loaned to them severally, with full authority to make and perfect said sales in all cases where the said companies can dispose of the interest of the State of Tennessee in the defaulting railroad, for a sum of money equal to the amount of the bonds of the State of Tennessee, with unpaid interest due upon them, and which bid may be discharged and satisfied by an equal amount of the bonds of the State of Tennessee, with accrued interest, legally issued by the State of Tennessee in aid of said railroad company, or for any other purpose, and with full power to place the purchaser or purchasers in the quiet possession of the railroad so purchased.

SEC. 2. *Be it further enacted*, That if any receiver, who shall have control of any or either of the railroads of the State, and which road may be sold by the commissioners, under the first section of this act, shall refuse to give possession of said railroad track, railing, rolling stock, &c., to the purchaser upon demand, the Governor of the State shall issue his warrant to the sheriffs of the different counties through which the road may run, commanding them to put the purchaser or purchasers in possession of the railroad, its property and effects, and the receiver so refusing shall be guilty of a high crime, and, upon conviction, shall

be fined in a sum of not less than one thousand dollars, and imprisoned at the discretion of the court.

SEC. 3. *Be it further enacted*, That in the event said commissioners cannot sell said defaulting railroads, or either of them, for the amount and upon the terms as prescribed in the first section of this act, then the said commissioners are authorized, after giving such public notice as they may deem advisable or necessary, to receive sealed bids from any person, persons, or corporation, for the purchase of either of the delinquent railroads of the State, and, after giving thirty days' notice of the time and place, shall open the bids so made, and the said commissioners will report to this, or some subsequent General Assembly, the best bid offered, with such recommendation as to them may seem best for the interest of the State, for the approval or rejection of the General Assembly.

SEC. 4. *Be it further enacted*, That no less than four of the commissioners named in this act shall be competent to perform any duties required by this act.

SEC. 5. *Be it further enacted*, That the commissioners, in making a sale of the interest of the State in any of the railroads, shall give the preference to the purchaser or purchasers who will obligate himself or themselves to operate the road so purchased over its entire line, from terminus to terminus; and that as the public welfare requires it, this act shall take effect from and after its passage.

Passed July 1, 1870.

W. O'N. PERKINS,
Speaker of the House of Representatives.

D. B. THOMAS,
Speaker of the Senate.

Approved July 5, 1870.

D. W. C. SENTER,
Governor.

Chapter XXIII.

AN ACT to amend the Act of 1870, chapter 79, for the sale of interest of the State in delinquent railroad companies, passed July 1, 1870.

Whereas, In the recent attempt to sell the State's interest in said roads various legal questions arose, presenting serious obstacles to a sale under the act of 1870, which it is deemed expedient and necessary to obviate before the interest of the State in said roads shall be again offered for sale; and *whereas*, by the act of 1852, chapter 151, section 12, the right is expressly reserved to the State to enact all such laws in the future as should be deemed necessary to protect the interest of the State and to secure the State against any loss in consequence of the issuance of bonds under the provisions of said act in such manner as not to impair the vested rights of stockholders of the companies: therefore,

Section 1. *Be it enacted by the General Assembly of the State of Tennessee*, That a bill shall be immediately filed in the Chancery Court at Nashville in the name and behalf of the State, to which all the delinquent companies, the respective stockholders, holders of the bonds, creditors, and all persons interested in the said several roads, shall be made parties defendant, and shall be brought before the court in the mode prescribed by the rules of practice in chancery established in the State, except as otherwise herein provided. And said court is hereby invested with exclusive jurisdiction to hear, adjudicate, and determine all questions of law and matters of controversy of whatever nature, whether of law or of fact, that have arisen or that may rise touching the rights and interest of the State, and also of the stockholders, bondholders, creditors, and others in said roads; and to make all such rules, orders, and decrees, interlocutory and final, as may be deemed necessary in order to a final and proper adjustment of the rights of all the parties, preliminary to a sale of the interest of the

State in said road. Also to declare the exact amount of indebtedness of each of said companies to the State; and likewise to define, as may be thought proper, what shall be the rights, duties, and liabilities of a purchaser of the State's interest in said roads, or either of them, and what shall be the reserved rights of said companies, stockholders, and others respectively, as against said purchasers after such sale, under the existing laws of this State.

SEC. 2. *Be it further enacted*, That the judge of said court is hereby empowered and specially requested to appoint a special term of said court, to be held on the first Monday in March, 1871, for the purpose of expediting a speedy determination of the various matters contemplated by this act; and it shall be the duty of the clerk of said court, immediately on the filing of said bills, to issue process and make application in the manner before indicated, requiring the defendants to appear at said special term; and the defendants shall be severally required at said term to put in such defense to said bills as they may respectively deem proper, provided that it be consistent with the code. And in order to save expense said parties or any of them may, in person or by attorney, with the consent of the attorney for the State, make an agreed case, submitting all such questions as they may think proper to the immediate decision of the court. And it is further provided, that in the discretion of the court formal pleadings may be dispensed with by a simple statement on the record of the points or matters relied upon by the parties and sought to be decided by the court.

SEC. 3. *Be it further enacted*, That if an account, on behalf of either of the parties, shall seem to the court proper and necessary touching any matters of fact in issue between the parties, an immediate reference of the same shall be made to the clerk and master, or, if thought preferable, to such special commissioner as the court may appoint, who shall proceed at once to take such account, and make report to an adjourned term of the court, within such period

as the court shall limit, not exceeding twenty days from the date of the decree ordering the account. And at such adjourned term final action shall be had upon said report. But the taking of such account shall not postpone the determination of all such questions of law presented by the parties as are not involved in the matters of account ordered to be taken.

SEC. 4. *Be it further enacted*, That competent counsel shall be retained on behalf of the State by the commissioners, whose duty it shall be, immediately on the passage of this act, to file a bill in said Chancery Court, so framed as to elicit a determination by the court of all questions of law and matters of controversy now existing, or that may hereafter arise between the State and any or all of the parties interested in said roads, and to conduct the suit and superintend its progress, with a view to the speediest practicable determination; and for such services said counsel shall be paid a fair compensation out of the public treasury of the State.

SEC. 5. *Be it further enacted*, That upon a final decree being made by the chancellor, settling the rights of the parties, either party shall have the right of appeal on writ of error to the Supreme Court, in the usual mode, except that the time for prosecuting a writ of error is hereby limited—in view of the urgent public necessity for a speedy determination—to thirty days from the final decree; and, in case of an appeal or writ of error to the Supreme Court, a transcript of the record, or such part thereof as may be thought necessary, shall be filed in the office of the Supreme Court at Nashville within said period of thirty days.

SEC. 6. *Be it further enacted*, That in case of an appeal or writ of error to the Supreme Court, as herein provided for, the judges thereof, in view of the pressing exigencies of the State, are hereby specially empowered, and respectfully requested, as soon as the transcript of the record shall be filed in the office of said court, if then in session, to take up and finally dispose of the case, in preference to all other

cases on the docket, and, if not in session, to appoint a special term for the immediate hearing of the same.

SEC. 7. *Be it further enacted*, That in case any of the said railroad companies should decline a contest with the State in regard to the sale of the State's interest in their roads, a sale may at once be made, and, upon the final determination of any controversy that may arise between the State and any of said railroad companies in the Chancery or Supreme Court, the interest of the State in such roads shall immediately be brought to sale by the commissioners.

SEC. 8. *Be it further enacted*, That a specific value shall be fixed upon the State's interest in each of said roads by the decree of the court, and the commissioners shall be authorized to dispose of the same at such valuation, either at public or private sale, as they may judge most advisable; and, if a sale of any of the roads cannot be made at such valuation, the same shall be sold for the highest price that can be obtained.

SEC. 9. *Be it further enacted*, That the interest of the State in either of said railroad companies may be sold on time, and the amount agreed to be paid by the purchasers may be discharged in any of the outstanding legal bonds of this State; but a sale on time shall be upon the following expressed conditions: The purchaser, at the time of sale, shall pay or deliver to the Governor at least one-fourth of the amount agreed to be paid in legal bonds of the State, and shall execute a bond, with sufficient security, to the Governor for the delivery of the remainder of the bonds, to be paid at intervals of one, two, and three years from the date of the sale, in like legal bonds of the State, and also to pay into the treasury, from the time of his purchase an amount equal to the interest accruing semi-annually from the remaining three-fourths of the bonds to be thereafter delivered by him, until the whole amount shall be delivered to the Governor, said interest to be paid as the coupons mature; and it is expressly declared that the failure of the purchaser to pay or deliver to the Governor

any subsequent installment of bonds as above provided, when the same shall fall due, shall work an absolute forfeiture to the State of all and every payment previously made; and in addition, his interest in such road shall be resold by the commissioners, after forty days' notice, to meet the default in payment by him.

SEC. 10. *Be it further enacted*, That upon the sale of any of the franchises of either of the railroad companies by the commissioners under the provisions of this act, all the rights, privileges, and immunities appertaining to the franchise so sold under its act of incorporation and the amendments thereto, and the general improvement law of the State and acts amendatory thereof, shall be transferred to and vest in such purchaser, and the purchaser shall hold said franchise subject to all liens and liabilities in favor of the State as now provided by law against the railroad companies.

SEC. 11. *Be it further enacted*, That whenever hereafter any existing railroad company to which bonds of the State have been issued or loaned, or any railroad company to be hereafter created, shall fail to pay to the State the interest due thereon for the benefit of the bondholders, or should fail to pay in as required by law the sinking fund, they may be proceeded against in the Chancery Court at Nashville in the same manner as is above provided in regard to existing delinquent railroads.

SEC. 12. *Be it further enacted*, That this act shall take effect from and after its passage, the public welfare requiring it.

Passed December 21, 1870.

W. O'N. PERKINS,
Speaker of the House of Representatives.
D. B. THOMAS,
Speaker of the Senate.

Approved Dec. 22, 1870.

D. W. C. SENTER,
Governor.